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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Division No. 94-1

FINAL REPORT OF THE INDEPENDENT COUNSEL
(IN RE: MADISON GUARANTY SAVINGS &
LOAN ASSOCIATION)

IN RE: WILLIAM DAVID WATKINS

AND

IN RE: HILLARY RODHAM CLINTON

Robert W. Ray
Independent Counsel

October 18, 2000
(Filed June 22, 2000)
Washington, D.C.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the District of Columbia Circuit

FILED OCT 18 2000

Division for the Purpose of
Appointing Independent Counsels

Special Division

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association
(In Re: William David Watkins)
(In Re: Hillary Rodham Clinton)

Division No. 94-1

Before: SENTELLE, *Presiding Judge*, FAY and CUDAHY, *Senior Circuit Judges*.

ORDER

Upon consideration of the Motion of Independent Counsel Robert W. Ray requesting authorization to publicly release and publish his Final Report in In Re: William David Watkins and In re: Hillary Rodham Clinton, it is

ORDERED that the motion be granted. It is therefore

ORDERED, ADJUDGED, and DECREED that the Final Report of Independent Counsel Robert W. Ray in In Re: William David Watkins and In re: Hillary Rodham Clinton, inclusive of an appendix containing all comments or factual information submitted by any individual pursuant to 28 U.S.C. § 594(h)(2), shall be released to the public. It is

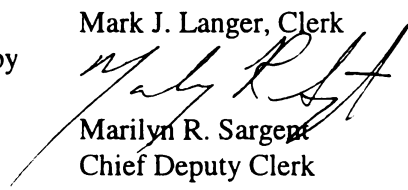
FURTHER ORDERED that Independent Counsel Robert W. Ray is authorized to make to the Final Report the corrections as set forth in the Motion.

Per Curiam

For the Court:

Mark J. Langer, Clerk

by


Marilyn R. Sargent
Chief Deputy Clerk

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the District of Columbia Circuit

FILED JUN 3 6 2000

Division for the Purpose of
Appointing Independent Counsels

Special Division

Ethics in Government Act of 1978, As Amended

UNDER SEAL

In re: Madison Guaranty Savings
& Loan Association
(In re: Hillary Rodham Clinton)

Division No. 94-1

Before: SENTELLE, *Presiding Judge*, FAY and CUDAHY, *Senior Circuit Judges*.

ORDER

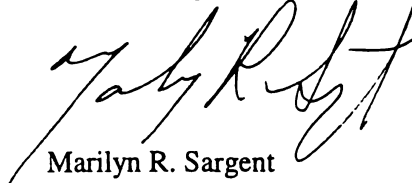
This matter coming before the Court upon petition by the Independent Counsel to unseal the Court's order dated April 4, 1996, Order, In re: Madison Guaranty Savings & Loan, Div. No. 94-1 (D.C. Cir., Spec. Div., April 4, 1996), it is hereby

ORDERED that the petition be granted. The Clerk's office shall unseal the April 4, 1996 order at such time as this Court orders release of the Final Report in this matter.

Per Curiam

For the Court:
Mark J. Langer, Clerk

by


Marilyn R. Sargent
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels

FILED APR 4 1996

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association

Division No. 94-1

UNDER SEAL

ORDER

Upon consideration of the Application for Order of Referral filed under seal on April 1, 1996, it is

ORDERED that the investigative and prosecutorial jurisdiction over the following matters be referred to Independent Counsel Kenneth W. Starr and to the Office of the Independent Counsel as related matters pursuant to 28 U.S.C. § 594(e):

Whether Hillary Rodham Clinton committed a violation of any federal criminal law (other than a Class B or C misdemeanor or infraction), including false statements or obstruction of justice, relating in any way to information provided on her behalf or statements made on her behalf to the General Accounting Office concerning the May 19, 1993, firing of employees of the White House Travel Office; and

Whether Hillary Rodham Clinton committed a violation of any federal criminal law (other than a Class B or C misdemeanor or infraction), including false statements or obstruction of justice, relating in any way to information provided by her or on her behalf or statements made by her or on her behalf to the Congress of the

United States concerning the May 19, 1993, firing of employees of the White House Travel Office.

The Independent Counsel shall continue to enjoy the full jurisdiction conferred upon him as a result of any previous Order of the Special Division of the Court.

The Independent Counsel shall have jurisdiction and authority to investigate to the maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether Hillary Rodham Clinton committed a violation of any federal criminal law (other than a Class B or C misdemeanor or infraction), including false statements or obstruction of justice, relating in any way to information provided on her behalf or statements made on her behalf to the General Accounting Office or to information provided by her or on her behalf or statements made by her or on her behalf to the Congress of the United States concerning the May 19, 1993, firing of employees of the White House Travel Office.

The Independent Counsel shall have jurisdiction and authority to investigate related allegations or evidence of violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, by any person or entity, as necessary to resolve the matter described above.

The Independent Counsel shall have jurisdiction and authority to investigate any violation of 28 U.S.C. § 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, arising out of the matter described above.

The Independent Counsel shall have jurisdiction and authority

to seek indictments and to prosecute any persons or entities involved in any of the matters described above, who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.

The Independent Counsel shall have all the powers and authority provided by the Independent Counsel Reauthorization Act of 1994.

IT IS FURTHER ORDERED that the Independent Counsel may disclose a copy of this Order to Hillary Rodham Clinton, her private counsel David E. Kendall, and White House Counsel John M. Quinn.

IT IS FURTHER ORDERED that the Independent Counsel may disclose the information contained in this Order to other persons or entities as is deemed by the Independent Counsel to be necessary to aid the investigation.


IT IS SO ORDERED.

Dated: April 4, 1996

Per Curiam
For the Court:

Mark J. Langer, Clerk

by


Marilyn R. Sargent
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED MAR 22 1996

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association
(In re: William David Watkins)

Division No. 94-1

O R D E R

Before: SENTELLE, *Presiding*, BUTZNER and FAY,
Senior Circuit Judges.

Upon consideration of the notification to the court pursuant to 28 U.S.C. § 592(a)(1) of the initiation of a preliminary investigation and application to the court pursuant to 28 U.S.C. § 593(c)(1) for expansion of the jurisdiction of an independent counsel, it is

ORDERED that, pursuant to 28 U.S.C. § 593(c)(1), the investigative and prosecutorial jurisdiction of Independent Counsel Kenneth W. Starr be expanded to investigate whether any violations of federal criminal law were committed by William David Watkins, former Assistant to the President for Management and Administration, in connection with his December 1993 interview with the General Accounting Office concerning the firing of the White House Travel Office employees and to determine whether prosecution is warranted. The Independent Counsel shall continue to enjoy the full jurisdiction conferred upon him as a result of any previous order of the Special Division of the Court. Pursuant to 28 U.S.C. § 593(c)(1), the Independent Counsel's jurisdiction shall be expanded to include the following:

The Independent Counsel shall have jurisdiction and authority to investigate to the maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether William David Watkins committed a violation of 18 U.S.C. § 1001 or any other federal criminal law, other than a Class B or C misdemeanor or infraction, in the course of his December 1993 interview by the General Accounting Office concerning the May 1993 firing of the White House

Travel Office personnel.

The Independent Counsel shall have jurisdiction and authority to investigate related allegations or evidence of violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, by any person or entity, as necessary to resolve the matter described above.

The Independent Counsel shall have jurisdiction and authority to investigate any violation of 28 U.S.C. § 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, arising out of his investigation of the matters described above.

The Independent Counsel shall have jurisdiction and authority to seek indictments and to prosecute any persons or entities involved in any of the matters described above, who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.


The Independent Counsel shall have all the powers and authority provided by the Independent Counsel Reauthorization Act of 1994. It is

FURTHER ORDERED that, in light of the Attorney General's motion heretofore made for the authorization of the disclosure of her application for this expansion pursuant to 28 U.S.C. § 592(e) and the ongoing public interest in this matter, this order be publicly disclosed.

Per Curiam

For the Court:

Mark J. Langer, Clerk

by 

Marilyn R. Sargent
Chief Deputy Clerk

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**Division for the Purpose of
Appointing Independent Counsels**

Division No. 94-1

**FINAL REPORT OF THE INDEPENDENT COUNSEL
(IN RE: MADISON GUARANTY SAVINGS & LOAN ASSOCIATION)**

OF

MATTERS RELATED TO THE WHITE HOUSE TRAVEL OFFICE

IN RE: WILLIAM DAVID WATKINS

AND

IN RE: HILLARY RODHAM CLINTON

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In accordance with 28 U.S.C. § 594(h) (1) (B) (1994),¹ the Independent Counsel² (In re: Madison Guaranty Savings & Loan Association) ("Independent Counsel") files this Final Report, together with four appendices, concerning In re: William David Watkins, Div. No. 94-1 (D.C. Cir. [Spec. Div.] March 22, 1996), and In re: Hillary Rodham Clinton, Div. No. 94-1 (D.C. Cir. [Spec. Div.] April 4, 1996) (under seal at the time of filing this Final Report), an investigation more commonly referred to as the "Travel Office" matter.³

¹ On June 30, 1999, the Independent Counsel Reauthorization Act of 1994, 28 U.S.C. §§ 591-99 (1994), expired and Congress did not extend it. The Independent Counsel is authorized, pursuant to 28 U.S.C. § 599 (providing for continuation of pending matters), to issue this Final Report.

² On October 18, 1999, Robert W. Ray was appointed Independent Counsel, pursuant to 28 U.S.C. § 593(e), following the resignation of Independent Counsel Kenneth W. Starr.

³ The Special Division's Order of Referral concerning Mrs. Clinton was originally filed under seal. Because the matters investigated concern allegations that have been widely reported by the news media for some time (see, e.g., Pete Yost, Counsel to File Report on FBI Files, A.P. Online, Mar. 13, 2000 (reporting that subsequent reports "will deal with the role of First Lady Hillary Rodham Clinton in the purge of the White House Travel Office and the Clintons[] Whitewater dealings"); Toni Locy, Clinton Friend Thomason Loses First Round in Court, Wash. Post, Apr. 27, 1996, at A2 (reporting that the Office of the Independent Counsel "is now investigating Hillary Rodham Clinton's version of the firings, which contradicts the one given by David Watkins, a former White House official")), this Office deems it in the public interest for the referral and report to be disclosed publicly at this time, and has concurrently petitioned the Special Division for such disclosure in accordance with 28 U.S.C. §§ 592(e) & 594(h)(2). Cf. In re: Madison Guaranty Savings & Loan Assoc. (In re: William David Watkins), Div. No. 94-1 (D.C. Cir. [Spec. Div.] Mar. 22, 1996) (granting the Attorney General's request to disclose publicly the application and referral relating to David Watkins as in the public interest because it "concern[ed] allegations that have been widely reported by the news media").

The Travel Office matter, however, is limited to (1) those matters conferred by this Court's March 22, 1996 and April 4, 1996 jurisdictional mandates (namely, whether William David Watkins or First Lady Hillary Rodham Clinton made false statements in violation of federal criminal law to the General Accounting Office or to Congress in connection with the dismissal of seven employees from the White House Telegraph & Travel Office), and 2) those matters arising from prior jurisdictional grants that formed the predicate for expanded jurisdiction (namely, whether Mr. Watkins or Mrs. Clinton made false statements to this Office in violation of federal criminal law or obstructed justice by withholding documents and information related to a November 15, 1993 memorandum prepared by David Watkins regarding

I. INTRODUCTION

On May 19, 1993, seven employees serving at the pleasure of President Bill Clinton in the White House Telegraph & Travel Office ("Travel Office") were dismissed.⁴ Many in Congress and the public criticized this action.⁵ As a consequence, the White House conducted a "White House Travel Office Management Review" which resulted in the reprimand of several White House staff members for their actions in the Travel Office dismissals.⁶ A separate investigation by the United States Department of Justice resulted in the indictment of one Travel

the dismissals). See jurisdictional discussion, infra, section I(A).

⁴ The seven individuals fired on May 19, 1993 were: Billy Ray Dale, who began working in the Travel Office in October 1961 and served as Director of the Travel Office from July 1982 until the firings; Gary Wright, who began working in the Travel Office in April 1961, and served as Deputy Director from July 1982 until the firings; John Dreylinger, who began working in the Travel Office in February 1967; Ralph Maughan, starting in September 1973; John McSweeney, beginning in February 1980; Barnaby Brasseux, who began service in the Travel Office in July 1982; and Robert Van Eimeren, who had worked in the Travel Office since May 1984. As is apparent from the various start dates and periods of service, these individuals served in both Democratic and Republican Administrations. In another matter investigated by this Office, the confidential FBI background reports of Billy Dale and two other Travel Office employees were requested by White House officials seven months after they were fired. See Final Report of the Independent Counsel In re: Anthony Marceca No. 94-1 at 19 (D.C. Cir. [Spec. Div.] June 21, 1996)(filed Mar. 16, 2000)(describing the discovery that Billy Dale's file had been requested on December 20, 1993).

⁵ E.g., 139 Cong. Rec. S7018 (June 9, 1993)(statement of Senator Dole); 139 Cong. Rec. S6526 (May 26, 1993)(statement of Senator Cohen); Paul Richter and Ronald J. Ostrow, Travel Flap Stirs In-House Probe; 5 to Regain Pay, L.A. Times, May 26, 1993; Associated Press, White House Rethinking Firings at Travel Office, St. Louis Post-Dispatch, May 26, 1993.

⁶ The White House Travel Office Management Review was conducted under the direction of Deputy Chief of Staff John Podesta and Special Assistant to the President Todd Stern.

Office employee -- Travel Office Director Billy R. Dale -- who was acquitted of all charges by a jury in the United States District Court for the District of Columbia.⁷

Initially, a regulatory Independent Counsel, Robert B. Fiske Jr.,⁸ examined the Travel Office firings because of their possible relationship to the July 20, 1993 death of former Deputy Counsel to the President Vincent W. Foster Jr., which occurred two months after the Travel Office firings.⁹ This Office assumed jurisdiction over these matters on August 5, 1994, when the United States Court of Appeals for the District of Columbia Circuit, Division for the Purpose of Appointing Independent Counsels ("Special Division"), appointed Kenneth W. Starr as Independent Counsel pursuant to 28 U.S.C. § 593(b).¹⁰ Independent Counsel Starr continued Mr.

⁷ Indictment, United States v. Dale, No. CR-94-469 (D.D.C.) (filed Dec. 7, 1994). Dale was charged with embezzlement and the wrongful conversion to his own use of money belonging to the government and the White House press corps. Judgment of Acquittal, United States v. Dale, No. CR-94-469 (D.D.C. entered Nov. 16, 1995) (Hon. Gladys Kessler, presiding).

⁸ Prior to the enactment of Independent Counsel Reauthorization Act in 1994, Attorney General Janet Reno appointed Mr. Fiske as regulatory Independent Counsel under 28 C.F.R. §§ 600, 603 (1993), to investigate, among other things, the matter commonly referred to as "Whitewater" that was subsequently reassigned to this Office.

⁹ Mr. Fiske also investigated the death of Mr. Foster because of "speculation about a possible link between Foster's death and issues related to Whitewater." Report of the Independent Counsel In re: Vincent W. Foster, Jr. at 1 (June 30, 1994).

¹⁰ The Court's Order provided that the Independent Counsel shall have jurisdiction to investigate possible criminal violations, other than a Class B or C misdemeanor or infraction, "relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc." In re: Madison Guaranty Savings & Loan Assoc., Div. No. 94-1 (D.C. Cir. [Spec. Div.] Aug. 5, 1994) (Order appointing Independent Counsel Starr). The Order further provided the Independent Counsel with "prosecutorial jurisdiction to fully investigate and prosecute the subject matter with respect to which the Attorney General requested the appointment of independent counsel, as hereinbefore set forth, and all matters and individuals whose acts may be related to that subject matter, inclusive of authority to investigate and prosecute federal crimes (other than those classified as Class B or C misdemeanors or infractions) that may arise out of the above described

Fiske's investigation into Mr. Foster's death and found that at the time of his death, Mr. Foster had been examining the May 19, 1993 firing of the Travel Office employees, and appeared to have concerns that the firings would result in Congressional or other legal inquiries.¹¹

Concurrently, in 1995, both the United States House of Representatives and the General Accounting Office ("GAO") conducted a separate inquiry into the Travel Office firings and into the subsequent White House review of the firings. Thus, during 1995, the Travel Office firings were the direct subject of Congressional inquiry and, simultaneously, the indirect subject of an ongoing investigation conducted by the Office of the Independent Counsel ("Office" or "OIC").

While these investigations were pending, on January 4, 1996, the White House produced to this Office and to Congress a never before acknowledged or released 1993 draft memorandum prepared by former Assistant to the President for Management and Administration William David Watkins.¹² This memorandum (hereinafter, the "Watkins Memorandum") discussed the firings, stating that the memorandum was "my first attempt to be sure the record is straight, something I have not done in previous conversations with investigators -- where I have been as

matter, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses." Id.

¹¹ Report on the Death of Vincent W. Foster, Jr., By the Office of Independent Counsel at 106, In re: Madison Guaranty Savings & Loan Association, Div. No. 94-1 (D.C. Cir. [Spec. Div.] Oct. 10, 1997). Following his death on July 20, 1993, a torn up note found in Foster's briefcase on July 26 included the following statement: "No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the Travel Office." Report of the Independent Counsel In re: Vincent W. Foster, Jr. at 13-14 (June 30, 1994).

¹² The next day, January 5, 1996, the White House also produced billing records related to Mrs. Clinton's work at the Rose Law Firm that had been subpoenaed eighteen months earlier in connection with other matters within the jurisdiction of this Office. The belated production of these documents will be addressed at the conclusion of the other matters to which they related. See supra, note 10.

protective and vague as possible."¹³ The Watkins Memorandum disclosed, among other things, that "Foster regularly informed me that the First Lady [Hillary Rodham Clinton] was concerned and desired action -- the action desired was the firing of the Travel Office staff."¹⁴

This memorandum amplified David Watkins's earlier testimony to a federal grand jury that the Clintons' personal friend Harry Thomason had told Watkins that he had "talked to Mrs. Clinton" about potential problems in the Travel Office, "and that she was very interested," "[i]t was on her antennae," and she had said, according to Thomason, "that the people in the Travel Office should be fired."¹⁵ The memorandum also elaborated on Watkins's earlier testimony about his one pre-firing telephone conversation directly with the First Lady: "[S]he said, 'Well, you know, we need to have our people in there.' She said, 'I have talked to many people that have been in the White House before, and there are just too many people, if you don't have your own people in -- there are too many leftovers that can create and cause us problems.' And said, 'This is something that we should have our people in there.'"¹⁶

Former White House Chief of Staff Thomas "Mack" McLarty had also testified before the grand jury that prior to the firings "Mrs. Clinton did visit with [him] about the [Travel Office] matter for about five minutes [O]nce she understood that I had been apprised of this situation and was going to fully evaluate it, that was the basic point of her comments about the

¹³ GJ 95-2 Exh. 69-E at 1.

¹⁴ GJ 95-2 Exh. 69-E at 1-2.

¹⁵ Watkins GJ 2/28/95 at 51.

¹⁶ Id. at 53.

Travel Office, simply to make sure I was aware of what she felt was a situation that certainly needed to be carefully reviewed and probably changed."¹⁷

Watkins's and McLarty's testimony and the newly-discovered Watkins Memorandum appeared to conflict with Mrs. Clinton's previous testimony in this Office's investigation. She had been asked during sworn testimony whether she had "any input with either Mr. McLarty or Mr. Watkins as to that decision" to fire the Travel Office employees, to which she responded, "I don't believe I did, no."¹⁸ She also denied that she had any "role" in the decision to fire the Travel Office employees.¹⁹

A. The Jurisdictional Grant to the Independent Counsel.

Although the veracity of Mrs. Clinton's testimony in a sworn deposition before this Office was within the scope of the Office's jurisdiction at the time, this Office did not have jurisdiction to investigate whether false statements were made in other investigations of the Travel Office firings conducted by the GAO and Congress. Consequently, to avoid duplicative and overlapping inquiries, the Independent Counsel, on January 10, 1996, requested that Attorney General Janet Reno apply to the Special Division for an expansion of this Office's jurisdiction or, in the alternative, to refer to the Office the additional matters (of false statements in other investigations) as "related to" the matters then under investigation.²⁰ The Independent

¹⁷ McLarty GJ 4/25/95 at 14.

¹⁸ H. Clinton Depo. 7/22/95 at 12.

¹⁹ Id. at 12.

²⁰ Letter from Kenneth W. Starr, Independent Counsel, to Janet Reno, Attorney General of the United States, January 10, 1996. See 28 U.S.C. §§ 593(c), 594(e).

Counsel informed the Attorney General that the investigation's subjects would include at least Mrs. Clinton and Mr. Watkins.²¹

On March 1, 1996, the Department of Justice informed this Office by letter that it had received a referral from the GAO alleging that David Watkins may have made false statements to the GAO in the course of an interview concerning the Travel Office firings, and that the Department of Justice would consider this Office's earlier request and the GAO's referrals regarding Mr. Watkins together.²²

On March 20, 1996, Attorney General Reno requested under 28 U.S.C. § 593(c) (1) that the Special Division expand the Independent Counsel's jurisdiction "to investigate whether any violations of federal criminal law were committed by William David Watkins, former Assistant to the President for Management and Administration, in connection with his December 1993 interview with the General Accounting Office concerning the firing of the White House Travel Office employees, and to determine whether prosecution is warranted."²³ The Attorney General determined that Mr. Watkins was a "covered" person for whom she was required to seek the appointment of an independent counsel following a preliminary investigation if she determined that further investigation was warranted.²⁴

²¹ Id.

²² Letter from John C. Keeney, Acting Asst. Atty. Gen., to Kenneth W. Starr, Independent Counsel at 2 (Mar. 1, 1996).

²³ Notification to the Court Pursuant to 28 U.S.C. § 592(a) (1) of the Initiation of a Preliminary Investigation and Application to the Court Pursuant to 28 U.S.C. § 593(c) (1) for Expansion of the Jurisdiction of an Independent Counsel at 1, In re: Madison Guaranty Savings & Loan Assoc. (In re: William David Watkins), Div. No. 94-1 (D.C. Cir. [Spec. Div.]) (filed by the Attorney General on Mar. 20, 1996).

²⁴ Id. at 2 (relying on Watkins's position as Vice President, Secretary, and Deputy Campaign Manager of the Clinton-Gore 1992 Campaign Committee to determine that he was a

The Attorney General further advised the Special Division that this Office had notified her it was already "investigating possible false statements concerning the Travel Office firings made to [Independent Counsel Starr's] office in the course of its inquiry into the suicide of former White House Deputy Counsel Vince Foster."²⁵ The Attorney General informed the Special Division that "[a]n investigation of whether such statements are false and should be prosecuted is within the Independent Counsel's jurisdiction because they were made to [the OIC] in the course of and therefore 'arise out of' [the OIC's] investigation."²⁶ Finally, the Attorney General informed the Special Division that:

[b]ecause Independent Counsel Starr is already investigating possible false statements relating to the Travel Office firings, it would be appropriate to expand his jurisdiction to include Watkins's statements to the GAO on that same subject.²⁷

On March 22, 1996, the Special Division granted the Attorney General's application and expanded this Office's jurisdiction "to investigate whether any violations of federal criminal law were committed by William David Watkins . . . in connection with his December, 1993 interview with the General Accounting Office concerning the firing of the White House Travel Office employees and to determine whether prosecution is warranted."²⁸ The Order also authorized investigation and prosecution of "any persons or entities involved in any of the

covered person); see also 28 U.S.C. § 591(b)(6)(defining a "covered" person to include "any officer of [the principal national campaign committee seeking the election or reelection of the President] exercising authority at the national level").

²⁵ Id. at 3.

²⁶ Id.

²⁷ Id. at 3-4.

²⁸ Order at 1, In re: Madison Guaranty Savings & Loan Assoc. (In re: William David Watkins), Div. No. 94-1 (D.C. Cir. [Spec. Div.] Mar. 22, 1996).

matters" described in the Order "who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters."²⁹

Also on March 22, 1996, the Department of Justice notified this Office that, in light of the jurisdictional expansion relating to David Watkins, "the allegation that Hillary Rodham Clinton obstructed a proceeding or made false statements to the GAO" was "clearly related to your expanded jurisdiction."³⁰ Accordingly, the Department advised the OIC that "we refer [the allegation] to you, pursuant to 28 U.S.C. § 594(e)."³¹

After the OIC sought clarification about whether this referral also encompassed an investigation of whether Mrs. Clinton made false statements or obstructed justice in connection with "statements made by her or on her behalf to the Congress of the United States concerning the May 19, 1993 firing of the employees of the White House Travel Office,"³² the Department of Justice advised that "[i]n light of the expansion of your jurisdiction that occurred on March 22, 1996, . . . we believe that th[is] matter is [also] related to your current jurisdiction. Accordingly, we refer it to you pursuant to 28 U.S.C. § 594(e)."³³

Following the Department of Justice's referral of matters relating to Mrs. Clinton, the Independent Counsel notified the Special Division of the referrals, as required under 28 U.S.C. §

²⁹ Id. at 2.

³⁰ Letter from John C. Keeney, Acting Asst. Atty. Gen., to Kenneth W. Starr, Independent Counsel (Mar. 22, 1996).

³¹ Id.; See also 28 U.S.C. § 594(e)(authorizing the Attorney General or the Special Division to refer matters "related to" the jurisdiction of the Independent Counsel).

³² See Letter from Kenneth W. Starr, Independent Counsel, to Janet Reno, Attorney General (Mar. 28, 1996).

³³ Letter from John C. Keeney, Acting Asst. Atty. Gen., to Kenneth W. Starr, Independent Counsel (Mar. 29, 1996).

594(e), and, "in an abundance of caution and to avoid any challenge to this Office's jurisdiction" on the ground that a referral order from the Special Division was necessary, also requested that the Court enter an order, pursuant to 28 U.S.C. § 594(e), referring the same matters to the Office.³⁴ On April 4, 1996, the Special Division issued an order under seal referring to this Office the questions of "[w]hether Hillary Rodham Clinton committed a violation of any federal criminal law (other than a Class B or C misdemeanor or infraction), including false statements or obstruction of justice, relating in any way to information provided on her behalf or statements made on her behalf to the General Accounting Office concerning the May 19, 1993 firing of employees of the White House Travel Office,"³⁵ and relating to "information provided by [Hillary Rodham Clinton] or on her behalf or statements made by her or on her behalf to the Congress of the United States."³⁶

B. Investigative Steps Taken by the Office of the Independent Counsel.

Following the expansion of the Independent Counsel's jurisdiction by the Special Division to include the Travel Office matter, the Independent Counsel assembled a team of attorneys, agents, paralegals, and support staff to conduct the investigation. This report is the culmination of the investigative work of more than ten attorneys, including Assistant United States Attorneys detailed by the Department of Justice to this Office, several other career prosecutors, and senior OIC staff.

³⁴ Notice of Acceptance of Referral and Application for Order of Referral Pursuant to 28 U.S.C. § 594(e), In re: Madison Guaranty Savings & Loan Assoc., (In re: Hillary Rodham Clinton), Div. No. 94-1 (D.C. Cir. [Spec. Div.] April 1, 1996).

³⁵ Order at 1, In re: Madison Guaranty Savings & Loan Assoc., (In re: Hillary Rodham Clinton), Div. No. 94-1 (D.C. Cir. [Spec. Div.] April 4, 1996) (under seal).

³⁶ Id. at 1-2.

The Independent Counsel enlisted the services of experienced criminal investigators and FBI agents already detailed to the OIC. These agents identified, located, and interviewed witnesses, reconstructed and analyzed evidence of the relevant events during the time periods before and after the Travel Office firings, and reviewed and analyzed the multiple investigations of those firings.

The OIC gathered and thoroughly reviewed the existing record on the Travel Office firings created by the House Government Reform and Oversight Committee, General Accounting Office, Office of Professional Responsibility, Office of Inspector General of the Department of the Treasury, Federal Bureau of Investigation, and the White House Travel Office Management Review investigations. Expanding on this record, the OIC identified, interviewed, and took sworn testimony of more than 127 witnesses regarding their knowledge of matters within the scope of the OIC's Travel Office Investigation.

Several federal grand juries in the District of Columbia were involved in the investigation of these matters. Between April 1996 and January 1999, these grand juries issued 125 subpoenas seeking witness testimony, as well as 89 subpoenas seeking the production of documentary evidence. The document subpoenas resulted in the production of over 55,000 pages of documents. In addition, there were five voluntary productions totaling more than 3,000 pages of documents.

C. Lack of Cooperation by Witnesses.

Many witnesses encountered during the investigation were not forthcoming. A description of specific examples is set forth in greater detail at Appendix A.

Witnesses' lack of cooperation took several forms. For example, some witnesses asserted unfounded claims of privilege. The White House Counsel's Office asserted that an attorney-

client privilege existed between government attorneys in the White House Counsel's Office and White House staff that permitted the employees to refuse to disclose communications involving the government counsel, and further, to order private attorneys to instruct their White House staff clients not to answer questions based on the White House's claim of attorney-client privilege. White House officials failed to search for and provide relevant documents in their possession in response to grand jury subpoenas. In some instances, witnesses' responses and document productions were coordinated by the White House Counsel's Office and the witnesses' private attorneys.

Despite these obstacles that substantially delayed this Office's receipt of relevant evidence, the Independent Counsel has determined that the investigation should now be concluded without the filing of criminal charges. This Report represents the conclusion of the investigation into the Travel Office matter, and that matter is now closed.

II. SCOPE OF REPORT

The reporting requirement under which this Office operates, 28 U.S.C. § 594(h)(1)(B) (1994), provides that before the Office is terminated, it shall:

file a final report . . . setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought.

This statutory language reflects a change from the pre-1994 law, which concluded with a so-called "declination clause," requiring that the final report include:

a description of the work of the independent counsel, including the disposition of all cases brought and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel.³⁷

³⁷ 28 U.S.C. § 594(h)(1)(B), Pub. L. 100-191, 101 Stat. 1293, 1302 (1987) (emphasis supplied).

Thus, the Independent Counsel Reauthorization Act of 1994 did not include an express declination clause.

The declination clause's deletion did not reflect a congressional determination that an independent counsel could never express a view relating to the matters under investigation. To the contrary, the declination clause's deletion resulted from a compromise adopted in the House and Senate Conference Committee during reauthorization. This Office has given careful consideration to the legislative history relating to the deletion of the "declination clause," outlined in Appendix B, and determined that the analysis and findings contained in this Report are consistent with Congress's intention as reflected by the statute's language and its legislative history.³⁸ This Report has been prepared with this legislative history and the factors adduced by Congress in mind.

III. FINDINGS

The Independent Counsel has concluded his investigation and determined that no indictments should be brought in this matter. Consistent with Congress's directives embodied in the legislative history and the statutory reporting requirement, the Independent Counsel concludes it is in the public interest to set forth the facts about the conduct of the two persons -- William David Watkins and Hillary Rodham Clinton -- which resulted in the appointment of an independent counsel. In doing so, the Independent Counsel also sets forth sufficient analysis to permit the reader to understand the Independent Counsel's decision to decline prosecution in this matter.

³⁸ See also Final Report of the Independent Counsel In re: Eli J. Segal, Div. No. 96-1 at 2 (D.C. Cir. [Spec. Div.] Dec. 19, 1997) (deciding "to include in the report sufficient detail to assure the Court, and any others authorized to read it, that our investigation was thorough, professional and competent; that the decision to decline prosecution was based on the merits and on the evidence adduced by this Office; and that resources were used wisely and economically").

Introduction -- This Office's inquiry has been the subject of substantial public interest and the decision of the Independent Counsel to decline prosecution is of public significance. Accordingly, the Independent Counsel deems presentation of an analysis of the grounds for his decision to be required to assure the public that the investigation conducted was professional, thorough, competent, and fair, and that the decision to decline prosecution and issue this report was based solely on the merits of the case and the evidence adduced by the investigation.

Any attempt to impute criminality to the investigation's subjects is contrary to the Independent Counsel's findings and conclusions. Rather, the analysis is provided in the hope that the public will accept the Independent Counsel's decision that the evidence was insufficient to establish the requisite elements of any criminal offense. All individuals, whether public figures or otherwise, begin any inquiry with the presumption of innocence.³⁹ That presumption has full force and effect unless and until a jury convicts a defendant based upon proof beyond a reasonable doubt.

In the Independent Counsel's judgment, insufficient evidence exists to establish criminal conduct beyond a reasonable doubt to a jury's satisfaction.⁴⁰ No indictments have been or will be sought in this matter. Thus, this Report fully and completely discharges William David Watkins and Hillary Rodham Clinton from all criminal liability for alleged violations of federal criminal law arising out of or related to their testimony or statements regarding the Travel Office firings.

³⁹ Herrera v. Collins, 506 U.S. 390, 398 (1993) (citing In re: Winship, 397 U.S. 358 (1970)).

⁴⁰ See United States Attorneys' Manual, Principles of Federal Prosecution, § 9-27.220 (A)(stating that a prosecution should be recommended or commenced if "the admissible evidence will probably be sufficient to obtain and sustain a conviction").

Factual Findings -- To determine the veracity of statements made by Mrs. Clinton and Mr. Watkins regarding Mrs. Clinton's role and her interaction with Mr. Watkins, this Office investigated fully a logically antecedent question: As a matter of historical fact, precisely what was Mrs. Clinton's role in the Travel Office dismissals? In other words, the jurisdictional mandate to determine federal offenses necessarily required the Office to develop a complete and thorough understanding of the historical events that resulted in the Travel Office firings. The Office therefore sought to establish a comprehensive historical record concerning the actions of all of the individuals who played a role in the Travel Office firings.

Our factual findings are summarized as follows. Concerning the interaction of senior White House staff and advisors with First Lady Hillary Rodham Clinton:

- Mrs. Clinton first became aware of allegations of misconduct in the Travel Office during a conversation with long time friend and advisor Harry Thomason. Mr. Thomason and Mrs. Clinton had at least three separate conversations about the Travel Office.
- Mr. Thomason was the impetus for Mrs. Clinton's concerns about the Travel Office. He also forcefully conveyed those concerns to other senior White House staff.
- Chief of Staff Mack McLarty had two separate conversations with Mrs. Clinton regarding the Travel Office -- one on May 13 and one on May 16, 1993. In the May 16 conversation, Mrs. Clinton characterized the Travel Office allegations as a "serious matter."⁴¹
- Deputy White House Counsel Vincent Foster, Jr. had at least two conversations with Mrs. Clinton regarding the Travel Office on May 13.
- David Watkins had one conversation with Mrs. Clinton about the Travel Office, which occurred by telephone on May 14. His notes reflect that she said (referring to the Travel Office employees): "[W]e need those people out. We need our people in. We need the slots."⁴²

⁴¹ McLarty GJ 7/31/96 at 80-82.

⁴² Watkins's notes 6/2/93, OIC Bates No. 542-DC-00001499.

- Senior White House staff and advisors -- principally McLarty, Watkins, Foster, and Thomason -- met and discussed Mrs. Clinton's concerns on at least three separate occasions.
- Taken collectively Mrs. Clinton's comments took on great import among the White House staff and advisors. When combined with Thomason's continuous entreaties to act, the senior White House staff felt significant pressure to fire the Travel Office employees.
- No substantial evidence exists to establish that Mrs. Clinton had any direct responsibility (whether informal or formal) for the actual decision to fire the Travel Office employees. The evidence, nevertheless, establishes that Mrs. Clinton strongly expressed her concern for prompt and appropriate action to senior White House staff and advisors. From this, those individuals understood that they were expected to act quickly.

Concerning the Travel Office's operation and the decision to fire the Travel Office employees:

- At the time of the firings, the audit by KPMG Peat Marwick of Travel Office operations had uncovered evidence of fiscal improprieties relating to the handling of the petty cash account. The auditors reported to David Watkins their findings concerning record keeping and the handling of petty cash in the Travel Office.
- At the time of the firings, the Federal Bureau of Investigation had determined that sufficient predicate existed to open a criminal investigation.
- Catherine Cornelius, Clarissa Cerda, and Darnell Martens, who had all been involved in arranging travel for President Clinton's 1992 campaign, actively sought to replace the Travel Office employees to further their own professional interests.

Prosecutorial Conclusions -- The Independent Counsel has concluded that the available admissible evidence is insufficient to prove to a jury beyond a reasonable doubt that William David Watkins, First Lady Hillary Rodham Clinton, or others committed any federal offense in providing information to the General Accounting Office, the United States Congress, or this Office regarding the Travel Office firings. More specifically, the Independent Counsel concluded that the evidence was insufficient to prove to a jury beyond a reasonable doubt that

either Mr. Watkins or Mrs. Clinton committed perjury or obstruction of justice during the course of their testimony before GAO, the Congress, and this Office's investigation.

Mr. Watkins testified repeatedly to the pressure that he felt from the First Lady to fire the Travel Office employees. Mr. Watkins had only one direct conversation with Mrs. Clinton, and neither his testimony nor that of Mrs. Clinton supports the allegation that she ordered or directed him to fire the Travel Office employees or that she pressured him to do so in that conversation. Mr. Watkins's testimony about the First Lady's involvement in the decision to fire the Travel Office employees is not contradicted by evidence that would persuade a jury unanimously beyond a reasonable doubt that it was false.

Concerning the First Lady's testimony before the grand jury regarding her involvement in the Travel Office firings, the evidence is overwhelming that she in fact did have a role in the decision to fire the employees and that she did have input with Watkins and White House Chief of Staff Mack McLarty, as well as Foster and Thomason. Nevertheless, the available admissible evidence is insufficient to prove beyond a reasonable doubt that Mrs. Clinton knowingly made a false statement in her sworn denial of such a role or input. Notwithstanding Mrs. Clinton's role and input into the decision to fire the Travel Office employees, allegations that her statements to Congress (including her responses incorporated from the GAO investigation) -- on this issue and other Travel Office-related issues -- were knowingly false could not be substantiated beyond a reasonable doubt.

Closure of the Investigation -- In light of these conclusions regarding the underlying conduct relevant to the Travel Office firings, the Independent Counsel has concluded the investigation of Mr. Watkins and Mrs. Clinton without seeking the return of an indictment. These matters are now closed.

IV. SUMMARY OF ALLEGED VIOLATIONS

The Office conducted a thorough investigation of the facts leading up to the Travel Office firings. The factual summary of that investigation is set forth in Section V -- Factual Summary. Before describing those events, this section sets forth the testimony and other conduct that were the subject of this investigation, namely those statements of Mr. Watkins and Mrs. Clinton that were allegedly false, the statements in the Watkins Memorandum that apparently stood in conflict with those statements, and the circumstances surrounding the failure to produce the Watkins Memorandum until January 1996.

Accordingly, this section of the Report presents a factual summary of conduct that this Office investigated as potential violations of federal criminal law. The summary includes the following information:

First, this section details the statements made by David Watkins and Hillary Clinton that were the subject of this Office's investigation under the Attorney General's referrals and the Special Division's orders regarding the dismissal of the Travel Office employees.

Second, this section describes the Watkins Memorandum's contents and its alleged contradictions of Mr. Watkins's and Mrs. Clinton's statements before investigative bodies, which formed the predicate for the initiation of this Office's investigation. Included in this discussion, and in Appendix C, is a description of the Watkins Memorandum.

Third, this section describes the statements in the Watkins Memorandum itself regarding Mrs. Clinton's involvement in the decision to fire the Travel Office employees. The details of the evolution of the Watkins Memorandum are set forth in Appendix C.

Fourth, this section describes the circumstances surrounding the failure to produce the Watkins Memorandum until January 1996, the details of which are set forth in Appendix D.

A. Watkins's Statements Regarding Mrs. Clinton's Involvement in the Travel Office Firings.

Pursuant to the investigative mandate given the Independent Counsel by the Attorney General and confirmed by the Special Division, this Office first identified those statements by David Watkins related to the Travel Office firings that may have been false and may have involved violations of federal criminal law, including provisions relating to false statements (18 U.S.C. § 1001), perjury (18 U.S.C. § 1621), and obstruction of justice (18 U.S.C. § 1503). Those statements included Mr. Watkins's statements to the General Accounting Office, the FBI, Congress, and this Office.

1. Watkins First Told the FBI About His Contact With Mrs. Clinton Concerning the Travel Office in August and September 1993.

On August 10, 1993, the FBI interviewed David Watkins as part of the Department of Justice Public Integrity Section's investigation into the handling of the Travel Office's finances. Watkins informed the FBI that in April 1993 Thomason told him that the Travel Office employees were "on the take" and that they should be fired.⁴³ Watkins also informed the FBI of a May 12 conversation with Thomason in which Thomason informed him that he had discussed the Travel Office matter with Mrs. Clinton and that she stated that the matter should be handled quickly and the Travel Office employees should be fired.⁴⁴ Watkins felt that during a May 12 meeting he attended with Thomason, Catherine A. Cornelius, Foster, and Associate White House Counsel William H. Kennedy, considerable pressure was being placed on them to take action.⁴⁵

⁴³ Watkins FBI Int. 8/10/93 at 3. Watkins subsequently confirmed that Thomason made this statement. See Watkins Int. 11/22/96 at 11.

⁴⁴ Watkins FBI Int. 8/10/93 at 3. Watkins also subsequently confirmed the accuracy of this statement. See Watkins Int. 11/22/96 at 15.

⁴⁵ Watkins FBI Int. 8/10/93 at 4.

Watkins also stated that on May 17, McLarty informed him that the Travel Office matter was "in the forefront of HILLARY CLINTON's mind and action needed to be taken."⁴⁶

Watkins also told the FBI of a May 14 telephone conversation with Mrs. Clinton, described in the FBI report of interview as follows:

She stated action need[ed] to be taken immediately to be certain those not friendly to the Administration were removed and replaced with trustworthy individuals. Watkins and Hillary Clinton discussed the impending twenty-five percent reduction in staff by October 1993 and the idea of replacing the individuals with an outsource agency to reduce costs.⁴⁷

On September 30, 1993, the FBI interviewed Watkins in connection with an investigation by the Office of Professional Responsibility at the Department of Justice of the propriety of the FBI's involvement in the White House's Travel Office investigation.⁴⁸ Watkins again told the FBI about his contact with Mrs. Clinton regarding the Travel Office:

Later on that day[May 12]⁴⁹, Mr. Thomas[]on came back to Mr. Watkins'[s] office. Mr. Thomas[]on stated that he bumped into Mrs. Hillary Clinton (the First Lady). Mr. Thomas[]on told Mr. Watkins that he discussed the [Travel Office] problem with the First Lady and she indicated that this is a matter that the White House should stay "ahead of."

. . . .

Mr. Watkins got in touch with the First Lady by telephone. She had an interest in tracking this matter and wanted to keep abreast of information on the review. . . . The First Lady did tell Mr. Watkins that she had spoken to Harry Thomas[]on concerning the matter. Mr. Watkins does recall the First Lady stating that we had made a mistake "not getting our people in place sooner."⁵⁰

⁴⁶ Id. at 5 (capitalization in original).

⁴⁷ Id. at 5.

⁴⁸ Watkins FBI Int. 9/30/93 at 1; DOJ/OPR Memorandum Report from Counsel Michael E. Shaheen, Jr. to Acting Deputy Attorney General Jo Ann Harris (Mar. 18, 1994).

⁴⁹ Watkins FBI Int. 9/30/93 at 1-2.

⁵⁰ Watkins FBI Int. 9/30/93 at 2-4. The FBI interview report did not reflect that Watkins

2. The GAO Interviewed Watkins in December 1993.

On December 9, 1993, GAO investigators interviewed Watkins.⁵¹ Lead Investigator Bob Homan consulted notes taken by all investigators to prepare a final typed report of the interview.⁵² Homan's typed report indicated that Watkins provided the following information about Mrs. Clinton's involvement:

The First Lady, through Mr. Foster, "expressed an awareness" of the Travel Office situation. Mr. Thomason had brought it to her attention. Mr. Foster asked Mr. Watkins to give her an update on the situation on May 14. Mr. Watkins told her on May 14 that Peat Marwick had found sloppy management of the Travel Office. She said that Mr. Thomason had talked to her and said that he could recommend people to do the Travel Office work. She mentioned the 25 percent staff reduction goal and said it would be good to have "our people" working in the office. She said that the administration had been criticized at that time for being slow in filling positions, had delayed too long, and said that they needed "our" people in operations. Mr. Watkins did not consider the First Lady to be exerting pressure on him. However, there was a "tremendous pitch" from Eller and Mr. Thomason to "take action. . . ."⁵³

The First Lady's comments about having our people in the Travel Office didn't apply to World Wide. Mr. Thomason's comment that he could recommend someone to do the Travel Office work pertained to the charter business and Penny Sample, specifically. Mr. Watkins didn't believe that Mr. Thomason was advocating to use TRM for the press charter business. Mr. Watkins "never

mentioned that pressure was coming from McLarty or Foster to take action on the Travel Office matter. Watkins assumed that the FBI did not specifically ask him about this issue. See Watkins Int. 11/22/96 at 45.

⁵¹ GAO Investigator Bob Homan GJ 6/27/96 at 4. The interview was not under oath, which is in accordance with normal GAO practice. Kingsbury GJ 6/27/96 at 39.

⁵² Homan GJ 6/27/96 at 4-5; Kingsbury GJ 6/27/96 at 39; Watkins GAO Int. 12/9/93, OIC Bates No. AJ-DC-00002049 (transcribed by GAO investigator Bob Homan 12/10/93).

⁵³ Watkins GAO Int. 12/9/93, OIC Bates No. AJ-DC-00002049 at 2066 (transcribed by GAO investigator Bob Homan 12/10/93) (emphasis supplied). Watkins stated that if he had been asked if he believed pressure was coming from Mrs. Clinton he would have answered "yes." See Watkins Int. 11/22/96 at 45. However, when asked if Mrs. Clinton exerted pressure on him, he said he "tried" to answer the question literally and truthfully by responding, "no." Id.

considered that as a motivating factor" in Mr. Thomason's involvement in the Travel Office.⁵⁴

3. Regulatory Independent Counsel Fiske's Office Interviewed Watkins in June 1994.

In a June 22, 1994 interview by the FBI and staff of the regulatory Independent Counsel, Watkins stated that "neither FOSTER nor KENNEDY were involved in the decision to fire the employees. It was WATKINS's decision to fire them."⁵⁵ In a later interview with this Office, Watkins repeated that he made the decision to fire the Travel Office employees.⁵⁶

4. Watkins Appeared Before a Federal Grand Jury on February 28, 1995.⁵⁷

In grand jury testimony on February 28, 1995, Watkins was asked whether Mrs. Clinton's comments caused him to understand whether "there was a direction, directly or implicit, from Mrs. Clinton that certain employees in the White House Travel Office should be fired?"⁵⁸ Watkins answered, "I don't think that Mrs. Clinton knew the employees, you know, at all. I

⁵⁴ Watkins GAO Int. 12/9/93, OIC Bates No. AJ-DC-00002049 at 2067 (transcribed by GAO investigator Bob Homan 12/10/93). "TRM" is a reference to TRM, Inc., a company owned by Harry Thomason, Dan Richland & Darnell Martens. See, infra.

⁵⁵ Watkins FBI Int. 6/22/94 at 2 (capitalization in original). Watkins confirmed the accuracy of this statement. See Watkins Int. 11/22/96 at 45.

⁵⁶ See Watkins Int. 11/22/96 at 25.

⁵⁷ Although the subpoena for Watkins's appearance called for him to produce relevant documents, Grand Jury 95-2 Subpoena No. D92 (Jan. 9, 1995)(demanding Watkins's appearance and production of "any and all documents and/or communications referring or relating to Vincent W. Foster, Jr. [including] but . . . not limited to indicies, memoranda or other documents . . ."), he did not produce the Watkins Memorandum and was not asked about it.

⁵⁸ Watkins GJ 2/28/95 at 54.

doubt if she knew any of them. I think -- I took that, you know, if warranted or if justified, that we should -- she felt strongly that we should have our own people in there."⁵⁹

Watkins also testified in relevant part as follows:

Q: Do you recall that Mr. Thomason then told you or relayed to you that Mrs. Clinton had said to Mr. Thomason in that conversation that the matter should be handled quickly, and the individuals in the Travel Office should be fired?

A: I don't recall those exact words, but I recall the gist that Mr. Thomason told me that he had talked to Mrs. Clinton and that she was very interested. It was on her antennae.⁶⁰

Q: Let me ask you, does anything ring a bell in terms of Mr. Thomason having told you that Mrs. Clinton had said to him that the people in the Travel Office should be fired?

A: Yes, I think so.

....

Q: At any time that week or thereafter, did Mrs. Clinton ever tell you that officials in the White House Travel Office should be fired?

A:

And then during that conversation, she expressed to me, she said, "Well, you know, we need to have our people in there." She said, "I have talked to many people that have been in the White House before, and there are just too many people, if you don't have your own people in -- there are too many leftovers that can create and cause us problems." And said, "This is something that we should have our people in there."⁶¹

....

⁵⁹ Id.

⁶⁰ Id. at 51. During his OIC interview, however, Watkins stated that he specifically remembered that conversation. Watkins Int. 11/22/96 at 15.

⁶¹ Watkins GJ 2/28/95 at 51-53. See also Watkins Int. 6/13/00 at 3 (describing Mrs. Clinton's discussion -- as communicated to Watkins -- with former First Lady Rosalynn Carter about "getting their own people on board").

Q: Did Mr. McLarty tell you at that time that he had also discussed this matter with Hillary Clinton, and that she also believed that action needed to be taken?

A: He intimated that. I would say that what he said as I recall -- my recollection is that he said something like, "Well, I had dinner with the President and Mrs. Clinton last night, and it was certainly on her antennae or on her wave length or something."⁶²

....

Q: [D]id you tell Mr. Foster that in various conversations that you had, it was conveyed to you that Mrs. Clinton wanted these people terminated?

A: I can't specifically say if I did, but I very well might have. I might have had that conversation with him on Monday that I understood that we were -- that probably because of the Peat Marwick audit and the gross mismanagement that they had discovered that we had grounds to terminate the White House Travel Office, and that I understood that that's what Mrs. Clinton wanted, yes.

....

Q: Did you feel at that point [when Foster decided to bring in the FBI to investigate] that there was some pressure to go ahead and do something pretty quickly?

A: I felt there was certainly an energy to do something and find out some answers as to what we could do or what we were going to do pretty quickly. I would term it in my expression there was a sense of urgency.⁶³

Watkins recalled telling McLarty, Patsy Thomasson, and Vince Foster that he "fell on [his] sword on that occasion for a lot of people" concerning Mrs. Clinton and her involvement because "it was something that was -- the sense of urgency was perpetrated a lot by Mrs. Clinton."⁶⁴

⁶² Watkins GJ 2/28/95 at 56.

⁶³ Id. at 58, 90-91.

⁶⁴ Id. at 97-98.

5. The Senate Banking Committee Staff Deposed Watkins in July 1995.

On July 11, 1995, the Senate Committee on Banking, Housing, and Urban Affairs deposed Watkins, who testified in relevant part:

Q: Who would have made the decision to dismiss the Travel Office staff?

A: I made the decision with the concurrence of the Chief of Staff.

Q: Who else would have been involved, who else at the White House would have been involved in looking into the Travel Office matter prior to the dismissal of the staff?

A: Again, all of this is in the GAO report and on the record, the people involved and their involvement. As my assistant, Ms. [Patsy] Thomasson was involved through the various points. . . .⁶⁵

6. The OIC Interviewed Watkins in January 1996.

On January 15, 1996, after the discovery of a memorandum prepared by David Watkins -- later to be known simply as the Watkins Memorandum -- about the Travel Office firings, the OIC again interviewed Watkins.⁶⁶ The report of interview of Watkins's statements during this interview reads as follows:

HARRY THOMAS[JON had bumped into HILLARY CLINTON and told her about the mismanagement and financial improprieties at the Travel Office, and subsequently THOMAS[JON told WATKINS that HILLARY CLINTON was very interested in the matter and wanted quick action. THOMAS[JON went on to say if there was any wrongdoing, HILLARY CLINTON thought they ought to fire the people in the Travel Office. WATKINS does not specifically recall if HARRY THOMAS[JON was told by HILLARY CLINTON to tell WATKINS to fire them, nor does he recall if there was a specific condition of wrongdoing on the part of the Travel Office staff, before they should be fired.

. . . .

⁶⁵ Deposition Before Senate Comm. on Banking, Housing and Urban Affairs, 104th Cong., 21-22 (1995)(testimony of David Watkins).

⁶⁶ Watkins FBI Int. 1/15/96 at 1.

During those two days, FOSTER and WATKINS had two or maybe three conversations wherein FOSTER told WATKINS [that] HILLARY CLINTON was concerned and desired action, and the action she desired was the firing of the Travel Office staff.

....

MCLARTY stated the Travel Office was "definitely on Hillary's radar screen." At that point, WATKINS told MCLARTY the report indicated reasons for firing the Travel Office staff, and WATKINS intended to do so.

....

First Lady HILLARY CLINTON did not "direct" DAVID WATKINS to fire the Travel Office employees. However, HILLARY CLINTON did have a role in the events that led up to the firings in that her interest in the matter put pressure on WATKINS to act. WATKINS knew he had to act quickly and the most desirous outcome in the eyes of his superiors was to fire the Travel Office staff. WATKINS did consider HILLARY CLINTON one of his superiors. HILLARY CLINTON responded to the information she was given about the mismanagement of the Travel Office. However, WATKINS made the decision to fire them and MACK MCLARTY backed him up on it. HILLARY CLINTON was a "factor" in the decision to fire the Travel Office staff.⁶⁷

7. Watkins Testified Before the House Committee on Government Reform and Oversight in January 1996.

On January 17, 1996, Watkins testified about Mrs. Clinton's involvement in the Travel Office firings before the House Committee on Government Reform and Oversight. When asked whether he understood that it was the First Lady's intent that the Travel Office employees be fired, he responded: "Yes, it is, Congressman."⁶⁸ He also testified that the First Lady did not "direct, order, or command" him to fire the employees.⁶⁹ He admitted that he felt the "pressure of

⁶⁷ Id. at 6, 8, 10 (capitalization in original).

⁶⁸ White House Travel Office--Day Two: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 58-59 (1996)(testimony of David Watkins).

⁶⁹ Id. at 75.

the desires and wishes of others."⁷⁰ Although he described that pressure as "intense," and expressed his recognition that there would be "hell to pay" for the failure to act as "those above you desire," he insisted that he "did make the decision."⁷¹ He also said that with respect to the pressure that he felt, he was "not positive that the First Lady knew the pitched pressure that was coming] The pressure I felt, I heard was coming from the First Lady, was conveyed to me primarily through Harry Thomason and Vince Foster."⁷²

B. Mrs. Clinton's Statements Regarding Her Involvement in the Travel Office Firings.

This Office also identified those statements by Mrs. Clinton related to the Travel Office firings that may have been false and may have involved violations of federal criminal law, including provisions relating to false statements (18 U.S.C. § 1001), perjury (18 U.S.C. § 1621), and obstruction of justice (18 U.S.C. § 1503). Those statements included Mrs. Clinton's statements to the General Accounting Office, Congress, and this Office.

1. Mrs. Clinton Testified in a Sworn Deposition Before This Office in July 1995.

In a sworn deposition conducted by this Office on July 22, 1995, Mrs. Clinton testified about the Travel Office firings. When asked who made the decision to fire the Travel Office employees, Mrs. Clinton testified, "Well, the best I know is David Watkins and Mack McLarty, I assume, based on what I have learned since and read in the newspapers."⁷³ When asked if she

⁷⁰ Id. at 109.

⁷¹ Id. at 121-22.

⁷² Id. at 171.

⁷³ H. Clinton Depo. 7/22/95 at 12. Watkins had testified that Thomason had told him that Mrs. Clinton wanted the Travel Office employees fired, but when asked whether Mrs. Clinton was "in a position to direct . . . that people . . . should be fired," Watkins said, "Well, Mrs. Clinton did not work for -- obviously, did not work in the administration, but she had influence." Watkins GJ 2/28/95 at 51-52. David Gergen, who arrived at the White House at the end of May

"ha[d] any role in it," she replied, "No, I did not."⁷⁴ When asked whether she "ha[d] any input with either Mr. McLarty or Mr. Watkins as to that decision," she answered, "I don't believe I did, no."⁷⁵

Mrs. Clinton also described her conversations with Vince Foster, along with her May 14 conversation with Watkins:

Q: Did you have any discussion with Mr. Foster, or a discussion at which Mr. Foster was present, about the White House Travel Office prior to the firing of the employees on May 19, 1993, that you remember?

A: I recall two brief conversations with Vince, but I don't know when they occurred. So, I don't know whether they were before or after your reference to the firings on May 19th. So, I can't place them in time. But I did have two brief conversations with him.

. . . .

Q: Focusing on the first discussion first, would you tell us what was said in that discussion?

after the firings, said he never heard "that she ordered the firings." Gergen GJ 7/1/96 at 12. Watkins said the decision to notify the employees they were going to be fired was made by him on Monday, May 17, that he communicated that decision to McLarty when McLarty came into his office for an update that morning, and that McLarty "concurred and agreed" with Watkins's decision "to proceed." Watkins GJ 2/28/95 at 55-56. McLarty's testimony is consistent with Watkins's. McLarty GJ 7/31/96 at 119, 138-39.

Patsy Thomasson, Watkins's deputy, who consulted with Watkins about his decision the morning of May 17, agreed with Watkins's rendition of events. Thomasson 6/24/96 at 69-74, 203-204. Thomasson said in testimony during 1995 that Watkins arrived back from his weekend away on May 17 having changed his mind about firing the employees, "convinced they need[ed] to go," and that he then "goes off and talks to other people" before "the action took place." Thomasson GJ 7/11/95 at 17, 12-13. Dee Dee Myers testified that Watkins made the firing decision "in consultation with a number of other people, including Mr. Nussbaum, Mr. Foster, people like that," and that "probably Mack McLarty" and the "First Lady" were "probably" "informed about it" and "concurred." Myers GJ 7/23/96 at 85-86.

⁷⁴ H. Clinton Depo. 7/22/95 at 12.

⁷⁵ Id. at 9-12.

A: Well, all I can recall is that I said to him, or he said to me, it's not specific in my memory, something was happening about the Travel Office. And I, you know, I said, what's going on, or something to that effect. And he said, you know, we just have some tough decisions to make and we're moving on them, something to that effect. I can't say that's what he said. I can only give you a general feeling for my vague memory of what he said. The second conversation was when he said that David Watkins was on the phone and handed me the phone.⁷⁶ And David Watkins said he was at his daughter's graduation and that things were being taken care of in the Travel Office. And that was the extent of my conversations that I recall.

Q: Do you remember asking Mr. Foster on the first occasion, or Mr. Watkins on the second occasion, any questions about what was going on?

A: I just don't remember.

....

Q: Did you ever say to Mr. Foster that we need to get our people in there, with respect to the Travel Office?

A: I don't recall saying that, no.

Q: This is something that I just want to follow-up by asking you, when you say you don't recall, does that mean that you are pretty sure that it didn't happen, or does it just mean that you don't recall whether it happened or not?

A: I don't recall whether it happened or not. I have no recollection of that.⁷⁷

2. Mrs. Clinton Provided Written Responses to the GAO Through the White House Counsel's Office in April 1994.

As part of its investigation, the GAO submitted written questions to Mrs. Clinton.⁷⁸

Associate Counsel to the President W. Neil Eggleston testified that in a conference with Mrs.

⁷⁶ Lisa Caputo testified that in January 1996, Mrs. Clinton told her that Vince Foster was present when she had her conversation with Watkins. Caputo GJ 8/1/96 at 42.

⁷⁷ H. Clinton Depo. 7/22/95 at 9-12.

⁷⁸ Kingsbury GJ 6/27/96 at 22; Eggleston GJ 7/18/96 at 81.

Clinton, she had “approved” the answers to the GAO questions “word for word.”⁷⁹ He also stated that the answers submitted to the GAO on behalf of Mrs. Clinton were not verbatim recitations of his conversations with her.⁸⁰

On April 6, 1994, Mrs. Clinton's answers were submitted to the GAO by Eggleston. The questions are set forth below, followed by Mrs. Clinton's answers:

- Q. How would you describe and to whom would you attribute the origin of the decision to remove the Travel Office employees?
- A. Mrs. Clinton does not know the origin of the decision to remove the White House Travel Office employees. She believes that the decision to terminate the employees would have been made by Mr. Watkins with the approval of Mr. McLarty.
- Q. How would you characterize your role in that decision?
- A. Mrs. Clinton was aware that Mr. Watkins was undertaking a review of the situation in the Travel Office, but she had no role in the decision to terminate the employees.
- Q. Did you ask or direct that any action be taken by anyone in regard to the White House Travel Office?
- A. Mrs. Clinton did not direct that any action be taken by anyone with regard to the Travel Office, other than expressing an interest in receiving information about the review.
- Q. Is Mr. Watkins's characterization of his discussion with you, as recorded by us, accurate? If not, how would you describe the discussion?
- A. Mrs. Clinton does not recall this conversation with the same level of detail as Mr. Watkins. She recalls that on Friday, May 14, she had a very short telephone call with Mr. Watkins. Mr. Watkins stated that Mr. Foster had mentioned that Mrs. Clinton was interested in knowing what was going on with the Travel Office. Mrs. Clinton knew that Mr. Watkins was out of town. Mr. Watkins conveyed to her that even though he was not in Washington, his office was taking appropriate action.

⁷⁹ Eggleston GJ 7/18/96 at 94, 97.

⁸⁰ Id. at 95.

Q. Did you participate in any other discussions with White House staff or Mr. Thomason concerning the White House Travel Office matter during the period leading up to the removal of the Travel Office employees on May 19, 1993? If so, when and how would you describe those discussions?

A. Mrs. Clinton has a general recollection of having conversations with Mr. Foster and Mr. McLarty about the Travel Office situation prior to the termination of the Travel Office employees. She has no specific recollection of any particular conversation with Mr. Thomason on this issue at that time.⁸¹

Mrs. Clinton believes that she spoke with Mr. Foster about the Travel Office before her telephone call with Mr. Watkins. She also believes that she had a very brief conversation with Mr. McLarty sometime before she spoke with Mr. Watkins. In that conversation, she told Mr. McLarty that she had heard about problems in the Travel Office and wanted Mr. McLarty to be aware of it.

Mrs. Clinton does not recall seeing the May 17 memorandum from Mr. Watkins to Mr. McLarty until after the Travel Office employees were terminated.⁸²

3. Mrs. Clinton Submitted a Sworn Statement to the House Committee on Government Reform and Oversight in March 1996.

On March 6, 1996, House Resolution 369 authorized the staff of the House Committee on Government Reform and Oversight ("House Committee"), for purposes of its investigation of the Travel Office matter, to take affidavits and depositions under oath from witnesses.⁸³ On March 21, 1996, Mrs. Clinton provided written responses to questions posed by the House Committee.⁸⁴

⁸¹ GJ 95-2 Exh. 254 (written questions from GAO); Mrs. Clinton's written responses to GAO's written questions 4/6/94, OIC Bates No. AJ-DC-00001520.

⁸² GJ 95-2 Exh. 254; Mrs. Clinton's written responses to GAO's written questions 4/6/94, OIC Bates No. AJ-DC-00001520.

⁸³ H.R. Res. 369, 104th Cong., 11-12 (1996).

⁸⁴ GJ 95-2 Exh. 8.

These written answers were given under oath and signed by Mrs. Clinton.⁸⁵ Mrs. Clinton incorporated the answers that had been previously given to the GAO into her response to Congress.⁸⁶ Mrs. Clinton responded in relevant part to the congressional questions as follows:

[Question No.] 7.

Identify and set forth the information sought in the preliminary statement for all communications that you had at any time with Harry Thomason or any individual acting on his behalf regarding any White House Travel Office matters, the personnel employed in the White House Travel Office, or any proposed or actual activities of Mr. Thomason at the White House, including but not limited to, all aviation matters involving Mr. Thomason, Darnell Martens, and/or TRM Incorporated, or other transportation related issues, and any reviews, civil or criminal investigations. . . .

Response to No[.] 7 . . .

At some point during the first part of May 1993, I believe I became aware from Vincent Foster or Harry Thomason of concerns about financial mismanagement in the White House Travel Office. I do not remember precisely what the concerns were, except that they involved allegations of waste, inefficiency, or improper procedures. I had no personal knowledge of or direct involvement with that office, and, indeed, I do not recall even knowing of the existence of the Travel Office until sometime in the first two weeks of May. I have a vague recollection of hearing either the outgoing or incoming president of the White House Correspondents' Association complain about the expense of press travel at the Association dinner on May 1, 1993, but I do not recall how or whether these complaints specifically related to the Travel Office.

. . . . I cannot recall specific conversations with [Mr. Thomason] regarding the White House Travel Office or its personnel, but as indicated above, it is possible that at some point in May 1993, he may have mentioned to me issues of possible financial mismanagement in the Travel Office. I do not recall what, if anything, I may have said to him on this topic. I do not recall saying to him that I was "ready to fire" the Travel Office employees. I do not know how Mr. Thomason may have construed remarks by me.⁸⁷

⁸⁵ Ricketts GJ 6/6/96 at 5-9.

⁸⁶ GJ 95-2 Exh. 8 at 1-4.

⁸⁷ Id. at 5-8.

....

At some point during the week of May 10, 1993, I spoke to Vincent Foster about the Travel Office, and he told me that William Kennedy, who was a lawyer in the White House Counsel's Office, was looking into reports of financial misconduct and that KPMG Peat Marwick would be conducting a review of the Travel Office. I believe I had two conversations with Mr. Foster on this matter, although I may have had more. I do not believe that I asked Mr. Foster why action wasn't being taken to terminate the employees of the White House Travel Office or that I stated to him that these employees should be fired immediately. I do not recall saying to Mr. Foster that I wanted him to "act" with respect to those employees or indicating how I believed he should "act."

....

I also recall a brief conversation with Thomas F. "Mack" McLarty at some point, in which I told him that I had heard about fiscal mismanagement problems in the Travel Office. I expressed my concern that if there were any problems in the Travel Office they should be addressed promptly. I would not have had enough information to know what steps, if any, should be taken, but I believed then and still believe that if there were fiscal mismanagement in any part of the White House, it would be important to take prompt and appropriate corrective action. I may have spoken to Mr. McLarty a second time about the Travel Office, but I have no specific recollection of what was said. I don't recall saying to Mr. McLarty that the Travel Office matter was in the "forefront" of my mind or that "action needed to be taken."

....

During the evening of Friday, May 14, 1993, I remember a brief telephone conversation with David Watkins, Assistant to the President for Management and Administration, who was out of the city. Mr. Foster was present, and he indicated that Mr. Watkins wished to speak to me about the Travel Office matter. Mr. Watkins stated that Mr. Foster had told him that I was interested in knowing what was going on with regard to the Travel Office. He told me that he was having a review conducted, and that, although he was out of town, his office was taking appropriate action. He may have mentioned that KPMG Peat Marwick was conducting some kind of audit or review. I recall that I thanked him for the report and let him know that I was glad he had taken the situation in hand.

I don't believe I had any conversation with Mr. Watkins about the Travel Office before or after this one telephone call. While I don't recall the specifics details of our conversation, I did not direct that any particular

action should be taken, nor did I make particular comments about what should be done (e.g., that I thought the Travel Office people "should be out"). I may have expressed the view that appropriate action should be taken if the circumstances warranted it. I do not recall telling Mr. Watkins I was going to an event with the President. I do not know how Mr. Watkins may have construed my remarks.

. . . .

Although I had no decision-making role with regard to the removal of the Travel Office employees on May 19, 1993, I expressed my concern, as set forth above, that if there were fiscal mismanagement in the Travel Office or in any part of the White House, it should be addressed promptly. I am sure I felt such action could include, if necessary and justified, appropriate personnel actions so that this Administration would not be blamed for condoning any existing fiscal mismanagement problems, even though the Travel Office employees had been hired by previous administrations. I may have expressed to Mr. Foster and Mr. McLarty, and perhaps to Mr. Watkins, an interest in receiving information about whether the review that was being conducted found evidence of financial mismanagement.

It is quite possible that I had conversations with other individuals about the White House Travel Office prior to May 19, 1993, but I do not recall them.⁸⁸

C. David Watkins Prepared a Memorandum Between September and November 1993 Regarding the Causes of the Travel Office Firings.

This Office's investigation of the statements by Mr. Watkins and Mrs. Clinton arose, at least in part, from the discovery of a memorandum prepared by David Watkins that discusses Mrs. Clinton's role in the Travel Office firings. That memorandum was an evolving document that went through several drafts and editorial changes between September and November 1993. The evolution of the Watkins Memorandum is described more fully in Appendix C.

⁸⁸ GJ 95-2 Exh. 8 at 5, 7-13 (emphasis in original). This answer was prefaced by a two-page explanation of how busy Mrs. Clinton was during the relevant time period and the fact that her father passed away in early April 1993. See id. at 6-7.

1. Background and Contents of the Watkins Memorandum.

Following the Travel Office firings, the White House conducted an internal investigation -- the White House Travel Office Management Review. The Management Review resulted in the issuance of a reprimand to Watkins. Watkins was very upset by the White House Travel Office Management Review process, his reprimand, and that he was perceived to have acted improperly.⁸⁹ On September 8, 1993, Watkins enlisted one of his assistants, Matthew L. Moore, to assist him in writing a memorandum to McLarty⁹⁰ responding to the White House Travel Office Management Review report.⁹¹ Between September and November 1993, Watkins and Moore prepared numerous drafts of this memorandum which stated that Watkins had been pressured to fire the Travel Office employees by Mrs. Clinton, and that the pressure had been communicated to him through McLarty, Foster, and Thomason.⁹² This information was not in the Management Review because, as Watkins explained to Moore, he had not provided the complete facts to the White House Travel Office Management Review.⁹³

⁸⁹ Varney GJ 6/18/96 at 51-52. Moore also speculated that Watkins wrote the memo in response to rumors circulating in the White House among senior staff that Watkins was being forced out of the White House. Moore GJ 6/20/96 at 61.

⁹⁰ Moore disagreed that the memorandum was intended for McLarty, though he admitted that Watkins wanted the drafts addressed to McLarty whether or not it was eventually sent to him. Moore GJ 6/20/96 at 67-68.

⁹¹ *Id.* at 63. Moore testified that Patsy Thomasson was present at the initial session on September 8. Moore GJ 6/27/96 at 23.

⁹² GJ 95-2 Exh. 69-B; White House Travel Office--Day Two: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 74 (1996)(testimony of David Watkins).

⁹³ Moore GJ 6/27/96 at 109.

2. Watkins Prepared Contemporaneous Notes in Late May and Early June 1993 During the White House Travel Office Management Review, Which Were Later Reflected in the Watkins Memorandum.

In a May 31 note to himself, Watkins wrote that on May 12 Harry Thomason "says he bumped into Hillary [and] she's ready to fire them all that Day."⁹⁴ In the same note, Watkins wrote that on May 14, Foster told him that "he's getting more pressure from [the] First Lady to Act."⁹⁵ On June 2, Watkins wrote a note relating to his May 14 conversation with Mrs. Clinton, quoting Mrs. Clinton as saying, "Harry says his people can run things better; save money, etc. And besides we need those people out -- We need our people in -- We need the slots."⁹⁶ Watkins concluded this note by writing, "Is the real story to be told?"⁹⁷

In contrast with the assertions contained in his notes, when White House Staff Secretary John D. Podesta and his deputy Todd Stern asked Watkins on June 3 whether he had been pressured to act quickly, Watkins indicated that Thomason thought that "ro[o]ting out corruption" in the Travel Office would make a good press story.⁹⁸ Watkins did not mention Mrs.

⁹⁴ GJ 95-2 Exh. 164 (emphasis and capitalization in original). Thomason has admitted that he told Watkins of Mrs. Clinton's concern about the Travel Office, but has denied telling Watkins that Mrs. Clinton was "ready to fire them all that day." See Thomason GJ 7/17/96 at 133-34; Thomason House Depo. 5/17/96 at 172. Thomason testified, "I believe there is no way I would have told David Watkins that, because that is not what Mrs. Clinton told me." Thomason GJ 7/17/96 at 134. Watkins insisted that Thomason made this statement. See Watkins Int. 11/22/96 at 15.

⁹⁵ GJ 95-2 Exh. 164 (emphasis in original).

⁹⁶ Watkins's notes 6/2/93, OIC Bates No. 542-DC-00001499. Thomason admitted that during one of his conversations with Mrs. Clinton he informed her that people would be available to handle the Travel Office if the employees were fired. Thomason GJ 7/17/96 at 136.

⁹⁷ Watkins's notes 6/2/93, OIC Bates No. 542-DC-00001499.

⁹⁸ Notes of Andre Oliver, 6/3/93, OIC Bates No. AJ-DC-00002105 (Oliver was a member of White House Deputy Chief of Staff Mark Gearan's staff, who assisted Staff Secretary John Podesta and Deputy Staff Secretary Todd Stern during interviews for the White House

Clinton (or her comments that he later reported to the GAO, the FBI, and the grand jury regarding having "our people in"⁹⁹) to Podesta and Stern in his interview for the White House Travel Office Management Review.¹⁰⁰

3. The Watkins Memorandum Evolved from Describing Pressure from Mrs. Clinton to Questioning Her Awareness of Her Involvement.

In early drafts of the Watkins Memorandum, Watkins described his contact with both Foster and McLarty where they communicated to him Mrs. Clinton's interest in the Travel Office.¹⁰¹ He wrote that the First Lady "took interest in having the Travel Office situation resolved quickly" and that Foster "regularly informed me that the First Lady was concerned and desired action -- the action desired was the firing of the Travel Office staff."¹⁰² He said that the "pressure from the First Lady and [McLarty] became irresistible."¹⁰³

Despite these early references to pressure from the First Lady, later drafts added language that suggested that Watkins did not know whether the First Lady was aware of the pressure he felt. In later drafts, he wrote that although he "felt extreme pressure from the First Lady," this "pressure" was "perhaps unknown to the First Lady" or "perhaps accentuated beyond the [sic]

Travel Office Management Review by taking notes.); see also Stern's notes 6/3/93, OIC Bates No. 210-DC-00000598 at 602.

⁹⁹ Watkins GJ 2/28/95 at 53; Watkins GAO Int. 12/9/93 at 17; Watkins FBI Int. 9/30/93 at 4.

¹⁰⁰ See Andre Oliver's notes 6/3/93, OIC Bates No. AJ-DC-00002105; Stern GJ 7/10/96 at 132; Podesta GJ 7/18/96 at 31. Watkins's interview by the White House Travel Office Management Review is more fully described infra, Section V(E).

¹⁰¹ GJ 95-2 Exh. 69-E at 2.

¹⁰² Id.

¹⁰³ Id. at 7.

her intention."¹⁰⁴ The final version of the memorandum omitted the language regarding extreme pressure, but retained the language that the pressure was "perhaps unknown to the First Lady."¹⁰⁵

D. The Watkins Memorandum Was Not Disclosed to This Office or Congress Until January 1996.

Despite its responsiveness to requests from this Office and the Congress, the Watkins Memorandum was not produced to Congress until January 3, 1996 or this Office until January 4, 1996, more than two years after its preparation.¹⁰⁶ As part of its jurisdiction, this Office was charged with investigating possible obstruction of the Congressional investigation and was authorized to investigate any obstruction of justice arising out of its own investigation. Because the Watkins Memorandum appeared to confirm the First Lady's role in the Travel Office firings and because the Congress and this Office had requested documents related to the firings, this Office investigated the circumstances surrounding the failure to produce any form of the document until January 1996.

Suffice it to say, the delayed production of this memorandum until 1996 deprived Congress and other investigations of crucial evidence into the causes of the firings. The particulars of the discovery of the Watkins Memorandum are contained in Appendix D.

V. FACTUAL SUMMARY

With the background related to the alleged violations in mind, this section extensively summarizes evidence related to the actual firing of the Travel Office employees, which bears on the analysis of the alleged violations set forth in Section VI, beginning on page 216.

¹⁰⁴ GJ 95-2 Exh. 69-O at 3, 10.

¹⁰⁵ GJ 95-2 Exh. 69-T at 3.

¹⁰⁶ See H.R. Rep. No. 104-849, at 157 (1996).

First, this section summarizes the operation of the Travel Office under Billy Dale.

Second, this section describes the involvement in providing travel services to the Clinton-Gore Presidential Campaign during the 1992 campaign by various persons and entities who were interested in replacing the Travel Office employees.

Third, this section describes the actions of Darnell Martens, Harry Thomason, Catherine Cornelius, Clarissa Cerda, and others during the transition and the early days of the Clinton Administration, which reflected their individual interests in replacing the Travel Office employees in the Clinton Administration.

Fourth, this section provides a detailed chronology of events beginning in late April 1993, leading up to the Travel Office firings on May 19, 1993.

Fifth, this section summarizes the investigation conducted for the White House Travel Office Management Review.

Sixth, this section summarizes the investigations conducted by the House Government Reform and Oversight Committee, the General Accounting Office, the Office of Professional Responsibility, the Office of Inspector General of the Department of the Treasury, and the Federal Bureau of Investigation.

A. There Was Evidence of Mismanagement of Travel Office Funds at the Time of the Firings.

The question of Mrs. Clinton's role in the decision to fire the Travel Office employees turned, in part, on whether there was a basis for the firing in the first instance. If this Office had determined that no predication for the firings existed and that all of the allegations of fiscal mismanagement were unfounded (or even falsely generated), such a determination would bear substantially on the question of whether the firings were at Mrs. Clinton's (or some other person's) direction. On the other hand, to the extent that allegations of misconduct were

substantiated and communicated to Watkins prior to the firings, that evidence supports his testimony that he was responsible for the formal firing decision.

As a consequence, this Office examined the Travel Office's historical operation. Although many, indeed the overwhelming majority, of the allegations against the Travel Office employees were unfounded, this Office concluded that at the time of the decision to fire the Travel Office employees, Watkins had been made aware of evidence of financial mismanagement. That evidence is detailed in this section.

1. For Nearly Thirty Years, Travel Office Director Billy R. Dale Had Provided Travel Services to the White House Press Corps.

During the three decades Billy Dale worked in the Travel Office, it had three functions: (i) to send and receive commercial cables for the President and White House Staff; (ii) to make commercial travel arrangements for those within the White House complex; and (iii) to charter commercial aircraft to transport the White House press corps on Presidential trips.¹⁰⁷ For longer trips the Travel Office arranged for the press's hotel accommodations, made sure there was sufficient phone service and briefing areas, and set up ground transportation.¹⁰⁸ During such trips, a member of the Travel Office staff flew with the press to help with accounting, billing, or "any general duty that needed to be done."¹⁰⁹

One of the peculiarities in booking an aircraft and pilot for presidential trips involved the press's desire to film the President deplaning Air Force One, and then filming again as Air Force

¹⁰⁷ Dale GJ 7/9/96 at 5-6.

¹⁰⁸ Id. at 8-9.

¹⁰⁹ Id. at 6-9.

One took off from each location.¹¹⁰ This meant the press charter had to arrive at each airport before Air Force One, but take off after it, requiring an airline and pilot familiar with the routine and with the necessity of coordinating with the air traffic control towers and the pilot on Air Force One.¹¹¹ It also meant that the plane needed to load and offload equipment quickly, so that speeches or briefings could be quickly distributed among the press as required.¹¹² This requirement made Boeing aircraft, which stood low enough to the ground that the cargo area could be accessed without using a conveyor belt loader, the preferred model.¹¹³

Of equal importance, larger, well-known commercial airlines were generally uninterested in this business because of the risk that the schedule might be changed or delayed, making the aircraft unavailable for the airline's next trip.¹¹⁴ Similarly, presidential trips were often scheduled on very short notice -- for example, a trip to view some recent natural disaster -- and large airlines could not rapidly pull an aircraft out of commercial service.¹¹⁵ Thus, commercial interest in providing services to the Travel Office was limited.

After three decades of working in the Travel Office, and learning the idiosyncrasies of keeping the press and President satisfied under often logistically difficult conditions, Billy Dale had developed a short list of known airline charter companies he knew could get the job done.¹¹⁶

¹¹⁰ Id. at 11-12.

¹¹¹ Id. at 11-13.

¹¹² Id. at 11.

¹¹³ Id. at 11-15.

¹¹⁴ Id. at 16.

¹¹⁵ Id. at 16-17.

¹¹⁶ Id. at 20-22.

Dale had been told "many times that when [he] went out on a Presidential trip, a happy and contented press corps is less likely to write a negative story about the President or the administration than one who is mad or he's uncomfortable in his seat or something like that."¹¹⁷

By the mid-1980s, the list of airlines interested in flying the press corps had dwindled to one, Pan Am, and the relationship worked well both from Dale's and the press's perspective.¹¹⁸ When Pan Am went bankrupt in the early 1990s, Dale tried several companies, but the press complained the planes were too small and the food was bad.¹¹⁹ Then some ex-Pan Am employees who had flown on presidential trips formed a charter company called Airline of the Americas (which later became known as UltrAir).¹²⁰ Dale welcomed the return of people already experienced in the demands of presidential press travel, and the press corps thanked Dale for bringing back the familiar faces who knew how to make them comfortable.¹²¹

¹¹⁷ Id. at 15-16. David Watkins's assistant Patsy Thomasson testified: "[T]he press is a very high-maintenance group in a way. They want . . . all first class seats on the airplane [T]hey wanted their dinner to be served off of a china plate, and it had to be a hot meal; it couldn't be a cold meal. And if it was a breakfast meal, they did not want their hot roll or their muffin or their bagel wrapped in plastic wrap And they didn't want to have [to] drink their coffee ever [] out of a plastic cup." Thomasson GJ 7/11/95 at 15-16. Thomasson pointed out that the press's schedule when traveling with the President was very difficult, sometimes the airplane meal was "the only hot food they get all day," and "that's what they were willing to pay for." Thomasson GJ 7/11/95 at 16.

¹¹⁸ Dale GJ 7/9/96 at 18-19.

¹¹⁹ Id. at 18.

¹²⁰ Id. at 18, 21.

¹²¹ Anne Edwards, who had worked in the Carter Administration and later joined the Clinton White House press office as Special Assistant to the President, Director of Press Advance, had known Dale for decades, and confirmed that he was well-respected and liked by the press. Edwards GJ 6/6/96 at 3, 58-59.

2. Dale Maintained a Petty Cash Fund for Cash Needs During Press Trips.

No taxpayer funds were involved in paying for the travel expenses of the White House press, which reimbursed the Office for its own expenses.¹²² After each trip, Dale estimated the expenses before the actual bills came in, and sent each press organization a bill for its pro rata share of the expenses.¹²³ Dale estimated the expenses for the press's planes, hotels, catering, cars, buses, and other sundry traveling expenses.¹²⁴ He also estimated and billed the press for petty cash used during the trip for bellmen who handled the press's luggage and equipment, food, tips, and unanticipated expenses.¹²⁵ This cash came from the Travel Office's "petty cash fund," which Dale said had "existed ever since I went to work in the office" in 1961.¹²⁶ On foreign trips Dale found it necessary to travel with as much as \$10,000 in petty cash.¹²⁷

Dale divided the press's bills into three basic categories: air travel, ground transportation and accommodations, and "miscellaneous," which included charges for such things as press centers or telephone installation costs.¹²⁸ "Petty cash" used during each trip was included under the miscellaneous category and was not separately itemized.¹²⁹

¹²² Dale GJ 7/9/96 at 24-25.

¹²³ Id. at 24-30.

¹²⁴ Id. at 28-30.

¹²⁵ Id. at 25-29.

¹²⁶ Id. at 24-27.

¹²⁷ Id. at 35.

¹²⁸ Id. at 28-29, 39.

¹²⁹ Dale GJ 7/9/96 at 28, 39. According to Dale, however, the press was "not concerned about [the precise amount of cash expended]. They're concerned that we get them to their destination and the bills come in and they're reasonable." Id. at 29. Mr. Dale testified that he

B. Business Entities and Campaign Staff that Provided Travel Services to the Clinton-Gore Campaign and the Press Covering the Campaign Wanted to Provide Travel Services to the Clinton Administration.

There were several individuals and business entities that arranged for and provided travel services to the Clinton-Gore Presidential Campaign and the press covering the campaign. Two business entities -- TRM, Inc. and Air Advantage -- provided charter services to the campaign. World Wide Travel, Inc. provided commercial reservation services; and two campaign staffers, Catherine Cornelius, and Clarissa Cerda, were responsible for arranging travel services. Because of their travel related expertise, they all played a role in the events that led to the firings in May 1993.

1. Several Entities Interested in Travel Office Business Provided Charter and Commercial Aviation Services to the Campaign and Press.

Three of the business entities that became involved in the Travel Office matter -- TRM, Inc., Air Advantage, and World Wide Travel, Inc. -- were all early participants in the Clinton-Gore Presidential Campaign and arranged travel services for the campaign and the press. TRM, Inc. and Air Advantage were introduced to the campaign through Arkansas native Harry Thomason, a long-time personal friend of President Clinton.¹³⁰ Thomason was a part owner of TRM,¹³¹ along with Thomason's literary agent Dan Richland,¹³² and Darnell Martens.¹³³ World Wide Travel was a local Little Rock-based company.¹³⁴

"was very strict" about not using any of this cash for his own expenses, claiming never even to have bought himself a dinner at the press corps's expense. Id. at 41.

¹³⁰ Thomason GJ 7/17/96 at 5-6.

¹³¹ "TRM" stood for Thomason, Richland & Martens. Martens GJ 7/16/96 at 6.

¹³² Martens GJ 7/16/96 at 3; Richland GJ 7/17/96 at 2-3.

Martens had formed TRM in late 1991 to perform financial and budgeting analysis for corporate aircraft operations and develop a computer data base tracking the safety of charter operations.¹³⁵ Martens was TRM's president and sole employee, and Thomason and Richland were the financiers.¹³⁶

Martens recalled that in December 1991,¹³⁷ one month after starting TRM, Thomason told Martens to try and get business chartering airplanes for Governor Clinton's presidential campaign.¹³⁸ Martens met with the campaign's Budget Director, David Buxbaum.¹³⁹ Martens and Buxbaum agreed that Martens "would be advising them on [which charters] to use, and assisting in the documentation, and just providing a sense of security for them."¹⁴⁰ No written

¹³³ Martens GJ 7/16/96 at 3.

¹³⁴ Carney GJ 6/13/96 at 4.

¹³⁵ Martens GJ 7/16/96 at 4-6.

¹³⁶ Id. at 3, 5; Thomason GJ 7/17/96 at 12, 19; Richland GJ 7/19/96 at 5, 14-15.

¹³⁷ At this point TRM had just two clients. The first was a charter operator named Executive Jet Management. Martens GJ 7/16/96 at 6. The other was Thomason's own aircraft maintenance and modification company, Thomason Aircraft Corporation. Thomason GJ 7/16/96 at 13. TRM was apparently not profitable between 1993 and 1996, based on partner Richland's statement that he received no profit or return of capital during that period. Richland GJ 7/19/96 at 8.

¹³⁸ Martens GJ 7/16/96 at 7-8.

¹³⁹ Id. at 8. When first asked if he arranged the contact, Thomason initially said, "Oh, I'm sure I probably found a name and gave him a phone number," but then claimed "[in] some way [Martens] was put in touch with the people in the Clinton campaign, and I was never privy to exactly how that happened." Thomason said, "I don't believe I knew David Buxbaum. But perhaps I did." Thomason GJ 7/17/96 at 17-18. Buxbaum stated that Thomason recommended Martens to him though he did not pressure Buxbaum, and after interviewing several other charter companies, Buxbaum hired Martens because he thought Martens would be "loyal to the Clinton campaign." See Buxbaum FBI Int. 12/4/96 at 1.

¹⁴⁰ Martens GJ 7/16/96 at 10.

contract or agreement was prepared.¹⁴¹ For compensation, Martens said he "advised them [] that it was typical in the industry for -- if you were going to assist in obtaining business for a charter operat[ion], that some percentage of that charter revenue could be flowed back, and generally, it was five percent."¹⁴² The Clinton presidential campaign began obtaining charter aircraft for campaign travel through TRM, Inc. in early 1992.¹⁴³

Martens testified that when the campaign called about "a trip, I would assist the campaign in determining what was the right size airplane for that particular trip and advise them generally about what it should cost. If they accepted that and said, 'Yes, let's -- we would like to book that,' then I would turn booking over to dispatch operations at Executive Jet, who would actually secure the airplane, provide a firm quote to us in the campaign, and I would ship that off."¹⁴⁴ Martens received his five percent commission directly from the charter company rather than from the campaign, and Martens disclosed that amount to Buxbaum.¹⁴⁵ Martens also testified

¹⁴¹ Id. at 9-10. Buxbaum said that given the daily changes occurring in a campaign, a contract would have been "futile." Buxbaum FBI Int. 12/4/96 at 1.

¹⁴² Martens GJ 7/16/96 at 9; see also, infra, Section (C)(regarding Martens's false allegation that UltraAir paid Billy Dale a five percent kickback for the Travel Office business).

¹⁴³ Martens GJ 7/16/96 at 7-8.

¹⁴⁴ Id. at 13. Executive Jet was a commercial charter company for whom Martens worked as a financial consultant. Martens GJ 7/16/96 at 4.

¹⁴⁵ Id. at 8, 12-13, 16-17. Buxbaum stated that he did not know the specific amount of commission paid to Martens, but thought that the amounts paid to Martens seemed reasonable to him. See Buxbaum FBI Int. 12/4/96.

that he completed paperwork required by the Federal Election Commission,¹⁴⁶ and prepared necessary reports to bill the press for travel.¹⁴⁷

In February 1992, as the campaign began to require larger aircraft, Martens contacted Air Advantage, in New Mexico, owned by Penny Sample.¹⁴⁸ Air Advantage brokered large aircraft for group travel, but did not own airplanes.¹⁴⁹ At six-week intervals,¹⁵⁰ Martens gave Air Advantage the number of flight hours the campaign needed, and Air Advantage negotiated with the aircraft owners and presented a bid to the campaign.¹⁵¹ Because the campaign sought "dedicated" aircraft specially reconfigured and painted with "Clinton-Gore logos," the same airplanes were used for each trip.¹⁵² The campaign paid for actual hourly use of the airplanes, along with a lease payment of approximately \$175,000 per month, per airplane.¹⁵³ According to

¹⁴⁶ Martens GJ 7/16/96 at 14.

¹⁴⁷ *Id.* at 31. Thomason was not aware that TRM arranged charters for the campaign, only that TRM was providing consulting services for the campaign, as well as negotiating contracts with airports for the best field prices, determining where to land with the least disruption in air traffic, and checking fuel prices. Thomason GJ 7/17/96 at 19-20.

¹⁴⁸ Martens GJ 7/16/96 at 21-22; Sample GJ 6/13/96 at 6-7.

¹⁴⁹ Sample GJ 6/13/96 at 3-4; Martens GJ 7/16/96 at 20.

¹⁵⁰ Martens GJ 7/16/96 at 22-23. Sample testified that Air Advantage entered into a new contract with the campaign each 30 day period. Sample GJ 6/13/96 at 17.

¹⁵¹ Martens GJ 7/16/96 at 22-23.

¹⁵² *Id.* at 21-22. Because of the aircraft's reconfiguration, and the costs involved, Martens said it was "common practice" in the charter business to continue using the same charter airline on an exclusive basis from that point forward. *Id.* at 24-25. Charles Caudle, head of Airline of the Americas/UltrAir also bid to provide air support to the Clinton Campaign, but was not successful. Caudle GJ 6/18/96 at 13-14. Martens and Thomason later focused on the exclusivity of UltrAir's contract with the Travel Office as evidence that the contract must have resulted from a "kickback." *See, infra*, at Subsection (C).

¹⁵³ Sample GJ 6/13/96 at 10-11.

Martens, neither he nor the campaign knew how much Sample was paying for the aircraft; they only knew what Sample billed the campaign.¹⁵⁴ Sample paid Martens approximately \$25 to \$50 per block hour (a per hour fee charged whether the aircraft is actually flown or not) as a commission.¹⁵⁵

In Sample's opinion, Martens did little for his five percent commission,¹⁵⁶ which she called an "unusual business relationship."¹⁵⁷ Sample insisted Martens was paid solely because he secured the business from the campaign, and that he otherwise performed no necessary work.¹⁵⁸ Sample said, "we were his brain," reconciling Martens's books and preparing the bills that he simply forwarded on to the campaign.¹⁵⁹ The details of each charter -- including all catering, fuel contracts, and ground handling -- were arranged by Air Advantage and the Secret Service.¹⁶⁰ Sample reconciled each day's business -- how many passengers were on each flight, how much

¹⁵⁴ Martens GJ 7/16/96 at 23-24.

¹⁵⁵ Sample GJ 6/13/96 at 10, 15. Sample testified that she submitted monthly summaries to TRM which delineated her 8% commission and the \$25 to \$50 per block hour commission paid to Martens. It was her understanding that Martens provided a different type of document to the campaign, but she had "no idea" whether Martens's bills detailed Sample's 8% and TRM's flat fee. She testified that Martens's extra fee "had been openly discussed with Mr. Buxbaum." Sample GJ 6/13/96 at 18-19. Martens also says that he disclosed this arrangement to Buxbaum. Martens GJ 7/16/96 at 25, 28. Buxbaum, though, stated that he did not know of the existence of or the nature of the fee agreement between Air Advantage and Martens. Buxbaum FBI Int. 12/4/96.

¹⁵⁶ Sample GJ 6/13/96 at 14-15. Martens insisted that he worked very hard during the campaign, clocking 15-17 hours a day, seven days a week. Martens GJ 7/16/96 at 28-30.

¹⁵⁷ Id. at 14-15.

¹⁵⁸ See Sample GJ 6/13/96 at 14-15.

¹⁵⁹ Sample GJ 6/13/96 at 15.

¹⁶⁰ Id. at 13.

was spent for every item -- and compiled monthly summaries which she submitted to Martens¹⁶¹ who, in turn, provided the information in report form to the campaign.¹⁶² However much work Martens did, the gross income TRM received from the campaign -- its only client in 1992¹⁶³ -- was approximately \$300,000, from which Martens said he received \$90,000.¹⁶⁴

While TRM and Air Advantage provided charter services, World Wide Travel Service, Inc., the largest travel agency in Arkansas, based in Little Rock,¹⁶⁵ was the Clinton campaign's exclusive provider of commercial airline travel and hotel bookings for campaign staff.¹⁶⁶ Beginning in early 1992, Chairman, CEO, and majority owner Betta M. Carney estimated that World Wide booked two to three million dollars worth of air travel for the campaign, and received a ten percent commission paid by the airline on each ticket.¹⁶⁷ World Wide provided the same services for the Clinton-Gore transition team.¹⁶⁸

¹⁶¹ Id. at 15.

¹⁶² Martens GJ 7/16/96 at 31.

¹⁶³ Id. at 32.

¹⁶⁴ Id. at 29.

¹⁶⁵ Davison GJ 6/13/96 at 7.

¹⁶⁶ Carney GJ 6/13/96 at 5-6.

¹⁶⁷ Id. at 3-4, 7-9.

¹⁶⁸ Id. at 9.

2. Catherine Cornelius and Clarissa Cerda Handled Travel Arrangements for the Campaign.

Catherine Cornelius, a distant cousin of the President,¹⁶⁹ had met then Governor Clinton years earlier, seen him at political gatherings while she was attending the University of Arkansas,¹⁷⁰ and occasionally corresponded with him.¹⁷¹ She was an unemployed recent Texas A&M graduate when she traveled to Little Rock in October 1991, to attend then Governor Clinton's announcement of his presidential campaign and to volunteer to answer phones.¹⁷² Six days later she was promoted to volunteer coordinator, and then to a Colorado field assistant position.¹⁷³ In early 1992, Cornelius, then twenty-three years old, assumed responsibility for coordinating commercial travel for campaign staff, assisted by agents from World Wide assigned to the campaign office.¹⁷⁴

¹⁶⁹ Cornelius GJ 7/25/96 at 4.

¹⁷⁰ Cornelius attended the University of Arkansas for her first two years of college before transferring to Texas A&M. Cornelius GJ 7/25/96 at 3-5.

¹⁷¹ Id. at 5-7.

¹⁷² Id. at 3-4.

¹⁷³ Id. at 4, 8.

¹⁷⁴ Cornelius GJ 7/25/96 at 8. Judith Kelley-Gehrki, Operations Manager of World Wide Travel, supervised the five other agents from World Wide: Jackie Alt, Angela Colclasure, Fan Dozier, Karen Harris, and Sandy Feltman. Kelley-Gehrki GJ 6/13/96 at 4. Colclasure described herself as a friend of Cornelius's. Colclasure GJ 6/13/96 at 5. Kelley-Gehrki described Cornelius as World Wide's main liaison with the campaign. Kelley-Gehrki GJ 6/13/96 at 6. She stated that "actually we did our job so well she really didn't have anything to do with the actual making of the reservations." Id. at 6-7. When asked what Cornelius's role was, Kelley-Gehrki explained, "[Cornelius] would, I'm assuming, somehow know what each department's budget was, and so I guess she looked at the amount that we wrote down after we made the reservation, and verified that they had enough funds to cover it, and approve it." Id. at 10.

Clarissa Cerda, then 29 years old and a recent University of Michigan law school graduate, also worked on travel matters.¹⁷⁵ Cerda worked as the campaign budget officer and the director of press and Secret Service travel reimbursements, and her duties included securing reimbursements for press charters pursuant to Federal Election Commission guidelines.¹⁷⁶ Cerda and Cornelius became friends through daily contact during the campaign, as both were involved in travel.¹⁷⁷ Cerda also dealt with Martens on press charters, and used World Wide as her billing agent.¹⁷⁸

David Watkins, then 51 years old, served as deputy campaign manager for operations, with ultimate responsibility for travel arrangements and other administrative matters.¹⁷⁹ Cornelius reported primarily to Watkins's subordinate Buxbaum, and had little direct contact with Watkins.¹⁸⁰ Cerda, like Cornelius, reported to Watkins through Buxbaum, though Cerda spoke with Watkins frequently.¹⁸¹

3. Cornelius, Cerda, Martens, and Thomason Showed an Early Interest in the Travel Office During the Transition.

Beginning almost immediately after the election, many of the individuals and entities involved in making travel arrangements for the Clinton campaign expressed an interest in

¹⁷⁵ Cerda GJ 7/1/96 at 4-5.

¹⁷⁶ Id. at 5-6.

¹⁷⁷ Id. at 7.

¹⁷⁸ Id. at 11, 12-13.

¹⁷⁹ Watkins FBI Int. 8/18/95 at 1, 4; see also Cerda GJ 7/1/96 at 13.

¹⁸⁰ Cornelius GJ 7/25/96 at 21.

¹⁸¹ Cerda GJ 7/1/96 at 13-14.

continuing that work, or similar work, on the Clinton Administration's behalf following the inauguration. Prior to April 1993, World Wide Travel, Cornelius, Cerda, and Martens each sought travel related work in the new administration.

a. After the Election, World Wide Approached Watkins Regarding White House Travel Business.

As early as December 1992, World Wide decided it would seek the White House's business for "personal travel that was non-official."¹⁸² Carney wrote Cornelius a letter stating "[w]e would like very much to continue our relationship, as you and your staff move into the White House."¹⁸³ Carney offered to teach Cornelius "how to put together a request for bid."¹⁸⁴ Cornelius and Cerda "were hopeful [World Wide Travel] would win that bid."¹⁸⁵ Carney said that because she "knew that the White House travel department had not been put [previously] out for bid," she had never attempted to solicit its business before.¹⁸⁶

In early January 1993,¹⁸⁷ Carney and World Wide's director of customer service, Steve Davison (who had successfully landed the campaign's business),¹⁸⁸ met at the transition office with Cornelius¹⁸⁹ and David Watkins, who was designated to become Director of the Office of

¹⁸² Carney GJ 6/13/96 at 10.

¹⁸³ Id. at 17.

¹⁸⁴ Id. at 18.

¹⁸⁵ Cornelius GJ 7/25/96 at 48.

¹⁸⁶ Carney GJ 6/13/96 at 11-12.

¹⁸⁷ See Cornelius GJ 7/25/96 at 13-17 (reviewing GJ 95-2 Exh. 346).

¹⁸⁸ Carney GJ 6/13/96 at 5; Davison GJ 6/13/96 at 6, 10.

¹⁸⁹ Watkins's assistant, Barbara Yates, was in Watkins's Little Rock office during this meeting, but did not actually participate in the meeting. She was aware that World Wide was

Management and Administration.¹⁹⁰ Carney told Watkins and Cornelius that bidding the Travel Office would "save money," and Davison pitched outsourcing as a way to satisfy the twenty-five percent White House staff cut that President Clinton promised during the campaign.¹⁹¹ Cornelius's impression was that Carney and Watkins had already spoken about the Travel Office.¹⁹²

b. Cornelius and Cerda Suggested Changes in the Travel Office.

David Watkins became White House Director of Management and Administration on Inauguration Day, January 20, 1993, and was responsible for the Travel Office as part of his

"making their pitch for the business, for some business coming out of the White House." Yates GJ 7/11/96 at 36. Davison had approached Cornelius about World Wide's interest in the White House Travel Office business previously. Cornelius GJ 7/25/96 at 12. World Wide, through Davison, provided Cornelius with a briefing book on federal government travel and educated her on how the White House Travel Office worked. Id. at 12.

¹⁹⁰ Watkins GJ 2/28/95 at 41-42; Davison GJ 6/13/96 at 22-23; Cornelius GJ 7/25/96 at 13; Honea GJ 7/10/96 at 3-4; see also Carney GJ 6/13/96 at 14. Kelley-Gehrki testified that she and Davison again met with Watkins and Cornelius some time later in Watkins's office in Washington, D.C. at the Old Executive Office Building, and that Watkins "basically told us that they wanted to do this right, and nothing was moving on it, and just to hang tight." Kelley-Gehrki GJ 6/13/96 at 29-30. Davison was pushing for a bidding process, but Watkins and Cornelius "didn't want to hear it." Id. at 29-30. Watkins and Cornelius observed during the meeting that the Travel Office was not being run properly, that "there was a lot of waste and they just wanted it fixed." Id. at 31.

¹⁹¹ Carney GJ 6/13/96 at 11; Davison GJ 6/13/96 at 16.

¹⁹² Cornelius GJ 7/25/96 at 15-16. Carney maintains that she expected that any Travel Office business would be put out for bid, so that during the January 1993 Little Rock meeting, she was merely urging Watkins to consider a bid process. Carney GJ 6/13/96 at 14-15. A follow-up letter from Carney to Cornelius was, however, devoid of any discussion of a bidding process, and instead stated World Wide's desire to continue its relationship with the Clinton-Gore staff, as well as World Wide's written proposal to Watkins for a "comprehensive Travel Management Program." Letter from Diana Hanson to Betta Carney 11/30/92, OIC Bates No. AL-DC-00004557, and Letter from B. Carney to Cornelius 12/2/92, OIC Bates No. 542-DC-00007473. Steve Davison acknowledged that the letter failed to mention a bid, but insists "[t]hose were our conversations." Davison GJ 6/13/96 at 25.

official duties.¹⁹³ Watkins previously had been involved in various business ventures in Arkansas and had served in the President's 1992 Presidential Campaign as Deputy Campaign Manager for Operations, a position principally concerned with the business aspects of the campaign.¹⁹⁴ He had also been involved in President Clinton's Presidential Exploratory Committee and in President Clinton's gubernatorial campaigns.¹⁹⁵ Watkins hired Cornelius and Cerda to work as administrative assistants.¹⁹⁶ Watkins also hired Cerda's law school classmate Matthew Moore, then 25 years old, who had worked with Watkins as campaign budget officer.¹⁹⁷ In February 1993, Watkins hired Patsy Thomasson,¹⁹⁸ then 45 years old, an Arkansas native and longtime friend of the President,¹⁹⁹ to serve as his deputy.²⁰⁰

¹⁹³ See Cerda GJ 7/1/96 at 19; White House Travel Office--Day Two: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 17 (1996)(testimony of David Watkins).

¹⁹⁴ Watkins Int. 8/18/95 at 1, 4.

¹⁹⁵ Id. at 1.

¹⁹⁶ Cerda said she agreed to work for Watkins temporarily as a favor to him, but made clear that she hoped "to do something that would let me use my legal skills and my international background" with the Administration. Cerda GJ 7/1/96 at 10, 20. After working as a secretary in Watkins's office for four months, on May 1, 1993 Cerda moved to the White House Counsel's Office, before having taken or passed any bar exam, where she remained until July 14, 1995. Id. at 23. Cerda testified that Cornelius handled most of the secretarial duties for Watkins, and she provided back-up. Id. at 24. Cornelius testified that she did not expect her job in Watkins's office to be secretarial, and that she had no training for it. She said that Cerda was assigned more substantive work. Cornelius GJ 7/23/93 at 33.

¹⁹⁷ Moore GJ 6/20/96 at 4-6. Moore, like Cerda, was a 1992 Michigan Law School graduate and the two knew each other from law school before joining the campaign. Id. at 4-6.

¹⁹⁸ Thomasson GJ 7/24/96 at 9, 13.

¹⁹⁹ Id. at 5-6.

²⁰⁰ Thomasson GJ 7/24/96 at 95; see also Aff. John A. Gaughan in United States v. Dale, No. CR 94-469 (D.D.C. Nov. 9, 1995)(signed 1/5/95), OIC Bates No. 556-DC-00000007.

c. Cornelius and Cerda Disliked Working for Watkins and Wished to Work in the Travel Office.

Cornelius and Cerda did not enjoy working for Watkins, apparently because they felt, at least in part, that being Watkins's administrative assistants was not sufficiently challenging. Cornelius's dissatisfaction spurred her to seek a different role -- one involving the Travel Office. Clinton Press Secretary Dee Dee Myers said Cornelius later told her that the problem was that Watkins "thought that these two young girls should be relegated to answering the phone," and "paid no attention to their recommendation or opinions about things."²⁰¹

Others in the office perceived that Cornelius's and Cerda's real difficulty was that they simply did not like secretarial work. Jennifer O'Connor, a deputy assistant on Watkins's staff,²⁰² said she thought a "major source" of Cornelius's frustration was that "she had a lot of administrative tasks. I think she, you know, answered the phone and things that she, essentially, didn't want to continue to be doing. She wanted a job in which she could do some other tasks."²⁰³ Working as an administrative assistant for Watkins had not been Cerda's first choice either.²⁰⁴ Watkins's third secretary, Jean Charlton, also thought that the reason Cornelius and Watkins did not get along was Cornelius "did not like being a secretary. She made that well known," as did

In May 1993, Kelly McClure was assigned to work as Thomasson's assistant. McClure GJ 7/11/96 at 5.

²⁰¹ Myers GJ 7/23/96 at 157, 168.

²⁰² O'Connor GJ 6/20/96 at 3-4.

²⁰³ Id. at 10.

²⁰⁴ Cerda said she told Watkins "that I would only commit to a maximum of six months in a job that didn't have to do with either legal work or international work. And it was understood from day one between David and I that this was temporary, it was to help him out." Cerda GJ 7/1/96 at 20.

Cerda, who told Watkins "very clearly" that "she didn't want to be a secretary, either."²⁰⁵ In any event, their dissatisfaction spurred them to seek new positions in the Travel Office. As Cornelius said, this goal "became important to me and much more of a focus the more and more unhappy I became with David."²⁰⁶

d. Cornelius and Cerda Advocated Reorganizing the Travel Office.

Throughout the transition, Cornelius had always expressed a strong interest in working in the Travel Office: "I wanted to work in the Travel Office, or I thought that would be a good place for me to work, because that's what I knew how to do."²⁰⁷ Cornelius shared this wish with many people.²⁰⁸ Cerda said that Cornelius "thought that that was the one [job] that most closely related to the functions she performed on the campaign. . . . [I]t was her first choice out of the jobs that she was considering."²⁰⁹

World Wide Travel's Steve Davison also heard Cornelius express an interest during the transition in continuing to work in travel and she asked Davison how government travel

²⁰⁵ Charlton GJ 7/30/96 at 13.

²⁰⁶ Cornelius GJ 7/25/96 at 32.

²⁰⁷ Id. at 169.

²⁰⁸ Cerda GJ 7/1/96 at 16-18; Charlton GJ 7/30/96 at 7; Walton GJ 6/6/96 at 8-9, 45-46, 53-54; Yates GJ 7/11/96 at 21-22, 25. Jeff Eller, Deputy Assistant to the President, Director of Media Affairs, claimed he could not "recall" whether she had mentioned an interest in working in travel in the new Administration. Eller GJ 7/17/96 at 9-18. Cornelius, who said that she talked with Eller about everything, had "no doubt" that she had discussed this interest with him. Cornelius GJ 7/25/96 at 167-70. Eller's inability to recall numerous pertinent facts relating to the Travel Office incident and its key players hindered this Office's investigation, since, as will be shown below, he was one of the key advocates of firing during the crucial time period. See, infra, at Subsection B(3).

²⁰⁹ Cerda GJ 7/1/96 at 17-18; see also Cornelius GJ 7/25/96 at 19.

worked.²¹⁰ Kelley-Gehrki, World Wide's Operations Manager, said Cornelius told her she wanted to work in a travel capacity in the White House, and that "[s]he was very hopeful she was going to get a job."²¹¹ Kelley-Gehrki further stated that she had heard Cornelius was a second cousin of President-elect Clinton, and that "there were obvious connections there . . . [b]ecause when he would come in and see us . . . you know, it was hugs"²¹² Kelley-Gehrki did not like Cornelius, as she felt Cornelius did not take her job seriously during the campaign but "got all the glory" for World Wide's hard, professional work.²¹³ On December 31, 1992, using the information fed to her by Kelley-Gehrki/World Wide,²¹⁴ Cornelius and Cerda drafted a memorandum for Watkins detailing the Travel Office's structure, advocating that commercial travel should be bid out.²¹⁵

²¹⁰ Davison GJ 6/13/96 at 13.

²¹¹ Kelley-Gehrki GJ 6/13/96 at 11-13, 17. Cornelius told her she wanted to work in scheduling and advance. Id. at 12.

²¹² Id. at 13.

²¹³ Id. at 18.

²¹⁴ Cornelius GJ 7/25/96 at 25. Kelley-Gehrki GJ 6/13/96 at 15-17. Kelley-Gehrki assisted Cornelius as a way to help World Wide obtain an "RFP" or "request for proposal" for White House business. Id. at 18-19. Kelley-Gehrki also thought that Cerda, who also worked on the memo, was trying to "write [herself] into the White House," though Cornelius "is the one [who was] really pushing for it, really trying to find her little niche." Id. at 21-22.

²¹⁵ Memo from Cornelius to David Watkins and Barbara Yates 12/31/92, OIC Bates No. 542-DC-00008025.

e. Cornelius and Cerda Sought the Position of Travel Office Co-Directors.

When Cornelius and others complained to Watkins that the Travel Office's level of performance was not up to what had existed on the campaign,²¹⁶ he asked Cornelius to draft a memorandum for him about the office's operations, which she submitted on January 26, 1993.²¹⁷ Later in January or early February 1993, Watkins asked Matt Moore to prepare another Travel Office analysis.²¹⁸ Cornelius was offended that Watkins gave this assignment to Moore because Moore had not worked on travel for the campaign.²¹⁹ Cornelius said that she and Cerda told Watkins "how upset we were and annoyed we were. And, again, it goes back to, we were supposed to answer the phones and Matt was going to do substantive work."²²⁰ Watkins told them they could submit a "counter-memo" if they liked.²²¹

²¹⁶ Cerda said that on January 26, 1993, Billy Dale showed up unscheduled at Watkins's office and offered to give her a Travel Office tour to help the new staff learn their way around. Cerda GJ 7/1/96 at 59. Cerda observed that Dale did not have procedures in place for reconciling expenses and press reimbursements like those she had followed during the campaign. *Id.* at 61-62. Rather, he billed the press based on estimates and never reconciled the billing with the White House's actual expenses. *Id.* Cerda also thought it odd that the Travel Office staff rotated functions so that no one was permanently responsible for a specific area. *Id.* at 64. Cerda passed along general criticisms to Watkins and the specifics to Cornelius, who also expressed to Watkins her concerns about what she heard. *Id.* at 65-67.

²¹⁷ Cornelius GJ 7/25/96 at 30-31; Memo from Cornelius to Watkins 1/26/93, OIC Bates No. 542-DC-00008032.

²¹⁸ Moore GJ 6/20/96 at 15-16.

²¹⁹ Cerda GJ 7/1/96 at 24-25. Moore had to go to Cornelius and Cerda for information to complete the memo. Moore GJ 6/20/96 at 19.

²²⁰ Cornelius GJ 7/25/96 at 44. Cerda agreed Cornelius was piqued "particularly because David often gave assignments to people so that she could continue answering the phones." Cerda GJ 7/1/96 at 42.

²²¹ *Id.* at 26; Cornelius GJ 7/25/96 at 44.

On February 15, 1993, Cornelius and Cerda submitted a memorandum to Watkins entitled, "The White House Travel Office: Briefing Book and Proposal."²²² The memorandum proposed that the employees of the Travel Office be terminated and replaced with more former Clinton campaign workers, nominating Cornelius and Cerda as "co-directors."²²³ White House Press Secretary Dee Dee Myers called this "a pretty aggressive move for two very young staffers to undertake of their own initiative."²²⁴ Cornelius said, "Well, to be perfectly frank, yes," when asked if the proposal to get rid of the current employees in favor of Clinton loyalists was based on her feeling that "they're political appointees and it's a change in politics and they los[t] their jobs."²²⁵ Cornelius and Cerda also proposed that the commercial air travel bookings be handled by World Wide Travel.²²⁶

²²² Briefing Book and Proposal by Catherine Cornelius and Clarissa Cerda 2/15/93, OIC Bates No. 542-DC-00007432. Cerda testified that Cornelius wrote most of the memo, and Cerda helped put together the comparison between their proposed structure for the Travel Office and that of the Bush Administration. Cerda GJ 7/1/96 at 56.

²²³ Cornelius GJ 7/25/96 at 47-48.

²²⁴ Myers GJ 7/23/96 at 157.

²²⁵ Cornelius GJ 7/25/96 at 46.

²²⁶ Id. at 48. Cornelius began asking people whether they wanted to be listed on the organization chart for the new Travel Office sometime in January or February. Hirsch GJ 6/6/96 at 13-14. Cornelius faxed the proposal to World Wide prior to the firings. Carney GJ 6/13/96 at 25. Carney testified that when she saw World Wide on the organizational chart she "just kind of laughed" because "that wasn't the way it worked" in Washington. Carney GJ 6/13/96 at 28-29. Kelley-Gehrki said she saw the flow chart memorandum prior to January 20. Kelley-Gehrki GJ 6/13/96 at 26. Cornelius placed others on the chart without asking them if they wanted to be included. Chris Walton, who had worked for Cornelius during the campaign, was named "Trip Coordinator" on the organizational chart. Walton testified that he first learned of the chart when it was published in the New York Times after the firings. Walton GJ 6/6/96 at 35.

There is some question whether Watkins read the memorandum.²²⁷ Administrative Assistant Jean Charlton showed a copy of the memorandum to Watkins's deputy Janet Green and remarked, "'This is the way they hope to get out.'"²²⁸

As a result of these actions (and those of Martens, described below), rumors swirled within the Clinton Administration that the Travel Office was going to be "restructured" somehow so that the current employees would lose their jobs.²²⁹ The rumors reached the Travel Office,

²²⁷ This became an issue after the firings when the press received a copy of the memorandum, and Watkins told then White House Communications Director George Stephanopoulos to tell the press that he had never actually read the Cornelius-Cerda plan to take over the Travel Office. See, *infra*, at Subsection (D)(9). Cerda testified that she placed the memorandum on Watkins's chair at approximately 11:30 p.m. on February 15, 1993. Cerda GJ 7/1/96 at 69. Cerda testified that she remembered the date and time vividly because it was President's Day, and the President himself walked into the office as she was xeroxing the memo and remarked that it was late and she should go home. Cornelius had already left. Cerda GJ 7/1/96 at 72. One of Watkins's other secretaries, Jean Charlton, later told Cornelius and Cerda that Watkins had taken the memorandum home that evening and said he would read it. *Id.* at 79. Charlton said she never actually saw the memo in Watkins's possession, though. Charlton GJ 7/30/96 at 15. Cornelius and Cerda concluded that Watkins at least glanced at the chart attached to their memorandum, because the following day Watkins asked them whether they could name one successful company that had "co-directors," and whether Dixie Sanders, whom they had listed on their chart, was the same Dixie Sanders who had worked on the campaign. Cornelius GJ 7/25/96 at 51; Cerda GJ 7/1/96 at 78-79, 137. Cornelius agrees she never actually saw Watkins read the memo. Cornelius GJ 7/25/96 at 157.

²²⁸ Green GJ 7/11/96 at 11-12.

²²⁹ Eisen GJ 6/6/96 at 10-11 (saw Cerda in "early February" and she "informed me that they were considering reorganizing the [travel] office, and informed me that if, in fact, they would reorganize the office would I be interested in a position there"); Tripp GJ 6/27/96 at 9, 12 ("I became quickly aware that David Watkins's office was at least somehow involved with the removal of the holdover staff"); Moore GJ 6/20/96 at 16-17, 19 (saying Watkins had him examine the Travel Office in late January or early February because "[h]e understood that it was structured differently from the campaign, and he wondered whether it should be restructured to look more like the campaign"); Cerda GJ 7/1/96 at 106 ("I believe that from day one, the Travel Office was at risk Day one is January 20th I think they were at risk because they were in positions that serve at the pleasure of the President. And we were looking at the different offices that had people who had not resigned and who had stayed on and did replace other individuals in similar situations"); Podesta's notes of Director of Press Advance Anne Edwards's White House Travel Office Management Review interview 6/25/93, OIC Bates No. 542-DC-

because Billy Dale testified that at "about the same time" Cornelius was sending Watkins her memorandum proposing that the office be restructured, "several White House correspondents were told by a Clinton transition official that the new administration had plans to remove the Travel Office staff."²³⁰

4. Martens Sought a White House Consulting Contract on the Use of Civilian Aircraft and Providing Other Services to the Travel Office.

While Cerda and Cornelius proposed altering the Travel Office's structure, Darnell Martens was also taking steps to secure work on travel related matters from the White House. This effort took two forms: 1) Martens sought a consulting contract to study the federal civilian aircraft fleet; and 2) Martens sought a consulting contract to work with the Travel Office staff or to replace them with his own services.

Martens's efforts began in early 1993 when Harry Thomason volunteered to assist the White House with repackaging the President's public image.²³¹ About this same time, Martens sent Thomason a confidential memorandum (dated January 29, 1993), entitled "TRM Action

00019029 - 19030 (indicating that Edwards told Podesta that she had received calls in December '92 from Dale in which Dale said, "[W]e'll lose jobs when Clinton people arrive."); Dreylinger GJ 6/6/96 at 5 ("we had received calls in [the Travel Office] for her [Cornelius] earlier on in the administration as Director of the Travel Office"); Brasseux GJ 7/9/96 at 7 ("we would receive phone calls sometimes from people asking . . . before she'd gotten there, people asking for Catherine Cornelius and we'd say she doesn't work here").

²³⁰ White House Travel Office -- Day Three: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 13 (1996)(testimony of Billy R. Dale).

²³¹ Edwards GJ 6/6/96 at 54. This was referred to as "The White House Project," which Chief of Staff "Mack" McLarty explained was an effort "to use the residence in a more effective way in comporting with the Clinton presidency." McLarty GJ 7/31/96 at 22.

Items."²³² This memorandum, which Thomason testified he did not read until months after it was sent,²³³ discussed perceived "Washington Opportunities" Martens thought TRM should pursue:

(A) Obtain some form of official status as advisors to the White House for general aviation policy matters. . .

(B). . . Review all non-military government aircraft to determine financial and operational appropriateness. A review of all 1,200 aircraft could be accomplished in two years. . . .

D) Determine who controls the scheduling of the White House Press Corps aircraft. This can be done by TRM such as the campaign aircraft were handled.²³⁴

a. Martens Was Interested in Consulting With Regard To Federal Civilian Aircraft.

On February 11, 1993, Martens wrote Thomason another memorandum proposing that TRM pursue a consulting contract to review civilian government aircraft, telling Thomason that his only task was to "[p]ut me in front of the right person at the White House."²³⁵ Martens's memorandum was passed to the President on or about February 17, 1993.²³⁶ Thomason and the President then discussed the subject of possible cost savings by consolidating government aircraft.²³⁷ After the President reviewed Martens's memorandum on February 17, it was

²³² Memo from Martens to Thomason 1/29/93, OIC Bates No. AL-DC-00007625.

²³³ Thomason GJ 7/17/96 at 25. Although Martens claimed to have never discussed the memo with Thomason, both admitted to having an argument about Martens's liberal use of the name "Harry Thomason & Associates" for his venture, as proposed in the memo. Martens GJ 7/16/96 at 38-39. Thomason said he "sort of went crazy" the first time he saw business cards or letterhead with the name, "Harry Thomason Associates," and "sent word" to Martens that "anything that had that name on it was to be dumped." Thomason GJ 7/17/96 at 26-27.

²³⁴ Memo from Martens to Thomason 1/29/93, OIC Bates No. AL-DC-00007625.

²³⁵ Martens GJ 7/16/96 at 49-50; GJ 95-2 Exh. 166.

²³⁶ Thomason GJ 7/17/96 at 33-34.

²³⁷ Thomason GJ 7/17/96 at 55. Thomason insisted he was not trying to help Martens-

forwarded to Chief of Staff Mack McLarty with the President's handwritten notation -- "Mack: These guys are sharp -- should discuss with Panetta / Lader. B.C."²³⁸ McLarty forwarded the memorandum to Leon Panetta, then Director of the Office of Management and Budget ("OMB"), and Phil Lader, a deputy at OMB.²³⁹

The President's handwritten notation was forwarded to Jack Kelly, a career official at the OMB, who said that Martens's February 11 memorandum with the President's notation "came back through my chain of command . . . stamped 'the President has seen' and then the note itself said, 'Mack, these guys are sharp' something . . . discuss with Panetta/Lader."²⁴⁰ Kelly remarked it was "certainly unusual" for a document with the President's handwriting to get down to him.²⁴¹ Kelly met with Martens in Washington, and advised Martens that the proposal came at a bad time because Senator James Sasser had already begun to examine the government civilian aircraft fleet.²⁴² Kelly suggested that Martens contact the General Services Administration

TRM get White House business, but simply passing Martens's aircraft idea along to the President because he thought there could be huge cost savings. Id. at 34-35.

²³⁸ Memo from Martens to Thomason 2/11/93, OIC Bates No. 542-DC-00025095 (containing the President's handwritten notes on the cover sheet); Thomason GJ 7/17/96 at 47.

²³⁹ McLarty GJ 7/31/96 at 16.

²⁴⁰ Kelly GJ 6/18/96 at 4-5; Memo from Martens to Thomason 2/11/93, OIC Bates No. 542-DC-00025095 (containing the President's handwritten notes on the cover sheet).

²⁴¹ Kelly GJ 6/18/96 at 6. The memo with the President's notation on it was first passed to Phil Lader, the deputy director for management at OMB at that time, and therefore Kelly's superior. Id. at 5. By the time the memo made it down to Kelly, in addition to the President's notation, it contained another notation dated April 30, 1993 stating "note that Phil wrote on top. It says 'Frank.' And that's Frank . . . Reeder, who was my boss's boss . . . the associate director of general management within OMB. . . 'Frank, let's discuss at' something 'staff meeting, Phil.'" Id. at 5, 7; Memo from Martens to Thomason 2/11/93, OIC Bates No. 542-DC-00025095.

²⁴² Kelly GJ 6/18/96 at 11-12, 19, 21-22.

("GSA"), as well as other "agencies that have aircraft and see if any of them would be interested in doing what he was proposing."²⁴³

Martens took Kelly's suggestion and met with GSA, where Martens learned that before his proposal to audit the civilian aircraft fleet could be implemented by GSA, the President needed to issue an executive order.²⁴⁴ Thereafter, on March 12, 1993, Martens sent another memorandum to Thomason detailing the scope of his proposed audit of non-military federal aircraft.²⁴⁵ Martens reminded Thomason that the information contained in the memorandum was generated "[b]ased on your discussion with President Clinton on my 2/11/93 memo."²⁴⁶

Thomason then put Martens in contact with Bruce Lindsey, Senior Advisor to the President,²⁴⁷ who, as a courtesy to Thomason, agreed to meet with Martens on April 7, 1993.²⁴⁸ Lindsey said that he initially was unsure what Martens wanted the White House to do.²⁴⁹ Martens explained that he wanted the Office of the President to issue an Executive Order empowering Interagency Committee on Aviation Policy ("ICAP") to perform an audit pursuant to a consulting agreement with TRM.²⁵⁰ The consulting contract that Martens was proposing

²⁴³ Id. at 22.

²⁴⁴ Martens GJ 7/16/96 at 52.

²⁴⁵ See GJ 95-2 Exh. 191.

²⁴⁶ GJ 95-2 Exh. 191.

²⁴⁷ Thomason GJ 7/17/96 at 36.

²⁴⁸ Lindsey GJ 8/1/96 at 26.

²⁴⁹ Id. at 25.

²⁵⁰ GJ 95-2 Exh. 446; Lindsey GJ 8/1/96 at 28.

would cost \$500,000, with about half of the money going to TRM.²⁵¹ Lindsey said Martens never suggested putting the contract out for bid, and instead wanted the White House simply to award the contract to TRM.²⁵² When Lindsey realized Martens's interest was limited to a \$500,000 contract, "as opposed to sort of a good government[al] interest of his," Lindsey lost all interest.²⁵³

b. Martens Was Interested in Consulting With Regard To the Travel Office.

Martens also sought consulting opportunities with the Travel Office. Martens testified that he knew nothing about the Travel Office, and "assumed there would be some sort of consulting fees" for TRM's performance of these services.²⁵⁴ Martens hoped to capitalize on Thomason's connection to the President for an "introduction" so he could "make money."²⁵⁵ Thomason told Martens that he had mentioned Martens's consulting proposals to the President one evening while they were bowling.²⁵⁶

²⁵¹ Martens GJ 7/16/96 at 54.

²⁵² Lindsey GJ 8/1/96 at 30-31.

²⁵³ Id. at 30, 38.

²⁵⁴ Martens GJ 7/16/96 at 35-36.

²⁵⁵ Id. at 35.

²⁵⁶ Id. at 50-51. Sample confirmed that Martens was supremely confident about his ability to obtain White House business consulting with the Travel Office, asking her "if there was anything I would like" after the election and letting her know that Martens's partner Harry Thomason was a close friend of the President. Sample GJ 6/13/96 at 47.

C. Martens Complained to Thomason About His Rejection by the Travel Office, Which Ultimately Was Communicated to the President, First Lady, and Other Senior White House Staff.

Early in the Administration, several steps taken by Martens laid the groundwork for the events resulting in the Travel Office dismissals. The steps included: 1) Martens speaking with Dale regarding the Travel Office and learning that Dale did not think Martens's services were necessary;²⁵⁷ 2) Martens drafting and sending a memorandum to Thomason regarding the Travel Office in which Martens alleged that AOA/Ultra did not "chargeback[]" costs to the press corps;²⁵⁸ and 3) Martens telling Thomason that Dale accepted "kickbacks" in running the Travel Office.²⁵⁹ As a result, Thomason discussed these issues with President Clinton, Mrs. Clinton, and David Watkins.²⁶⁰

1. Martens Approached Dale About Handling the White House Travel Business.

In late January 1993, Martens discussed with Thomason his interest in the handling of travel for the White House press corps.²⁶¹ Thomason telephoned Dee Dee Myers after the new administration had "only been at the White House for weeks, perhaps only days," and told her that "his acquaintance, friends, partner, whatever he was, Darnell Martens," would contact her

²⁵⁷ Dale GJ 7/9/96 at 79; Martens GJ 7/16/96 at 47.

²⁵⁸ Martens GJ 7/16/96 at 56; Memorandum from Martens to Thomason 3/3/93, OIC Bates No. AL-DC-00007620 (with fax cover sheet and summary attachment).

²⁵⁹ See, infra, Subsection (D)(4).

²⁶⁰ Thomason GJ 7/17/96 at 43, 72-78, 88-89, 125-31.

²⁶¹ Martens GJ 7/16/96 at 36.

about putting in a bid on the Travel Office.²⁶² Martens called Myers and asked how a company could bid on White House press charters, and Myers forwarded Martens to Billy Dale.²⁶³

Martens asked Dale how he might "go about bidding on or getting some of the White House charter business for the press corps."²⁶⁴ Dale asked Martens if he or his company owned any airplanes, and Martens responded, "No."²⁶⁵ Dale said he explained to Martens that he "had the same contacts that [Martens] had with the different airline companies and that [Dale] did not understand how [Dale] using a middle man to do the work that [Dale] had been doing for all these many years was going to save the White House press corps any money."²⁶⁶ Dale said that Martens admitted he was hoping to get some sort of fee, but never mentioned Harry Thomason or made any attempt to "connect himself with the President."²⁶⁷

Martens said he told Dale he could arrange for charter aircraft at a lower cost than the Travel Office was paying.²⁶⁸ According to Dale, Martens said that he "did such a big volume of

²⁶² Myers GJ 7/23/96 at 15-16, 19 (Myers's notes show that this call occurred sometime from January 20 -- 30); Thomason GJ 7/17/96 at 24, 30.

²⁶³ Martens GJ 7/16/96 at 36-37; Myers GJ 7/23/96 at 20. Martens claimed he called Dee Dee Myers to cultivate business for Air Advantage and that he "had not determined whether or not or how TRM could be involved." Martens GJ 7/16/96 at 41. Penny Sample, however, said that because the press corps was a very difficult clientele, she had little interest in the White House press charter business. Sample GJ 6/13/96 at 44.

²⁶⁴ Dale GJ 7/9/96 at 79.

²⁶⁵ Id.

²⁶⁶ Id.

²⁶⁷ Id. at 80-82.

²⁶⁸ Martens GJ 7/16/96 at 46.

charters that he might be able to get a discount."²⁶⁹ Dale responded "that many times [he] didn't have two weeks' notice to put out for bids to wait for these airlines to come back."²⁷⁰ Dale said he also explained the many factors he applied when selecting a charter company and plane, telling Martens that while "the low bid meant a lot . . . that was not always the determining factor."²⁷¹

Dale said Martens was "very persistent" so that, by his own admission, Dale got "aggravated with him" when he "couldn't get rid of him on the phone."²⁷² Martens said not only did Dale get "angry" and "short," but that Dale told him that "No, absolutely not" was there any "combination of price and service that [Dale] want[ed] to hear about" for TRM, and that Dale had been working at the Travel Office for 31 years and did not need help from Martens to do his job now.²⁷³ When Martens suggested that they should still meet, Dale told Martens he might be willing to meet with him "to sit down and discuss business" if Martens was ever in Washington, but he did not "think that it would be beneficial for [Martens] to make a special trip to Washington just to meet with [him]."²⁷⁴

²⁶⁹ Dale GJ 7/9/96 at 79.

²⁷⁰ Id.

²⁷¹ Id. at 81.

²⁷² Id. at 79. Penny Sample testified she had called Dale for the same reason four to five years before Martens, and was similarly rebuffed by Dale, whom she termed "abrupt." Sample GJ 6/13/96 at 25-27.

²⁷³ Martens GJ 7/16/96 at 47-48.

²⁷⁴ Dale GJ 7/9/96 at 80.

Martens called Thomason and told him about the call with Dale.²⁷⁵ Thomason said he "went through the ceiling," displaying "a burst of anger" when Martens told him about the conversation.²⁷⁶ Thomason said he reacted this way because "Dale was rather rude for a government employee," and Thomason believes "[t]hat government employees are taking people's money and so they should be courteous with everyone who calls."²⁷⁷ Thomason insisted that his concern had nothing to do with getting business for TRM, but because he thought all Travel Office business should be competitively bid.²⁷⁸

2. Martens Drafted A Memorandum Concerning Dale, Airline of the Americas/UltrAir, and Allegations of Criminality and, Thereafter He Talked With Thomason.

On March 3, 1993, Martens drafted a "confidential" memorandum to Thomason entitled "White House Press Charters" with a cover sheet stating:

Attached is a summary of where we are [] in the White House Press Charter story. The attached summary is for YOUR EYES ONLY at this time since I cannot yet prove everything contained in the report. I do believe it to all be true but proof is always something else again.²⁷⁹

Martens said in the memorandum that he was "trying to dig up information" on Airline of the Americas's involvement with the Republican party,²⁸⁰ speculating that "AOA knows something is

²⁷⁵ Martens GJ 7/16/96 at 48-49.

²⁷⁶ Thomason GJ 7/17/96 at 41. In contrast to Thomason's admission of anger, Martens remembered that Thomason merely said, "[t]hat's surprising," or something to that effect -- not a big reaction." Martens GJ 7/16/96 at 49.

²⁷⁷ Thomason GJ 7/17/96 at 38-39.

²⁷⁸ See Thomason GJ 7/17/96 at 71-72; Post-Ross GJ 7/1/96 at 10.

²⁷⁹ Memo from Martens to Thomason 3/3/93, OIC Bates No. AL-DC-00007620 at 7621 (with fax cover sheet and summary attachment); see also Martens GJ 7/16/96 at 56.

²⁸⁰ Martens GJ 7/16/96 at 58-59.

up. They now hang up on Air Advantage whenever they call. Does it sound to you like they are hiding something? Relative to these folks, I feel like Mike Wallace on 60 Minutes."²⁸¹ The memorandum's attached summary recounted Martens's conversation with Dale, stating:

Airline of the Americas is a Republican-operated charter airline. The company ran into controversy during the presidential campaign when it provided press transportation without "charge backs" to the press in order to insure good press coverage of Bush campaign appearances.

....

This activity by AOA does . . . indicate a decidedly anti-Clinton philosophy which seems, on the surface, to be inconsistent with the current Administration.²⁸²

Martens suggested two alternative "solution[s]" to the issues raised:

1) At a minimum . . . the Administration should direct the White House Transportation Department to contact TRM/Air Advantage who would systematically search the market for the best price/service combination for the flight request made on behalf of the press.

....

2) At best . . . the Administration should disband the antiquated Transportation Department system in favor of the functions being outsourced to TRM/Air Advantage.²⁸³

Martens admitted that he had no evidence supporting his claim of improper "charge backs," and said he obtained the information from Penny Sample²⁸⁴ and David Buxbaum.²⁸⁵

²⁸¹ Memo from Martens to Thomason 3/3/93, OIC Bates No. AL-DC-00007620 at 7621 (with fax cover sheet and summary attachment). Charles Caudle testified that neither he nor the company had any dealings with Air Advantage, and that he did not know of Penny Sample prior to the firings. Caudle GJ 6/18/96 at 42.

²⁸² GJ 95-2 Exh. 190.

²⁸³ Memo from Martens to Thomason 3/3/93, OIC Bates No. AL-DC-00007620 at 7624 (with fax cover sheet and summary attachment). Sample was offended that Martens associated TRM with Air Advantage, and that he submitted the proposal without her knowledge. Sample GJ 6/13/96 at 42-43.

²⁸⁴ Martens GJ 7/16/96 at 57, 63-64.

Martens testified that the document was merely a rough draft -- "me talking to myself" "a memo to my file"²⁸⁶ -- of the final version²⁸⁷ and that:

As soon as I became aware of the existence of the Travel Office, I determined there was nothing there that I could do, because I learned what they really [d]o. They don't just charter airplanes. What they do is they run a full-service travel agency. So I no longer had interest in it, and I changed the final version of the memo.²⁸⁸

Martens said he prepared the memorandum for his personal files only, and sent it to

Thomason "by accident only because" Thomason had asked for "information about Air of Americas."²⁸⁹ Martens said, "I never released the file outside of my company."²⁹⁰

Thomason said he did not recall reading the memorandum in March 1993,²⁹¹ and Martens claimed not to recall discussing it with Thomason.²⁹²

Sample recalled a conversation with Martens sometime in April about the Travel Office's operation by Dale and his relationship to UltrAir/AOA. Martens asked her about White House

²⁸⁵ Id. at 63-64. Buxbaum heard during the campaign that a charter service working for the Bush campaign was supplying free travel to the press, and believed Martens must have misunderstood the rumor, which was never substantiated. See Buxbaum FBI Int. 12/4/96 at 2.

²⁸⁶ Martens GJ 7/16/96 at 65-66.

²⁸⁷ No such version was ever produced to, or recovered by, this or any other investigation.

²⁸⁸ Martens GJ 7/16/96 at 69-70.

²⁸⁹ Id. at 64, 70.

²⁹⁰ Id. at 67.

²⁹¹ Thomason GJ 7/17/96 at 48. Thomason testified that the first time he saw a version of document was around May 10, 1993 when he asked Martens to fax it to the White House. Id. at 49.

²⁹² Martens GJ 7/16/96 at 56.

press corps travel and backgrounds of the Travel Office staff,²⁹³ and she obtained information for Martens on UltraAir from the United States Department of Transportation.²⁹⁴ Sample also spoke with either Bob Conser or Ross Fischer of Miami Air about Billy Dale, and said they "allude[d] to the fact that there was probably some solicitation . . . of kickback[s]."²⁹⁵ Both Conser and Fischer denied ever having made this charge.²⁹⁶ Without asking Conser or Fischer for the basis of this claim, Sample admitted she then did something that was "very irresponsible": She told Martens that "Miami Air felt that there were kickbacks going on, and they chose not to do business with the White House travel."²⁹⁷ Martens testified that he never used the word "kickback" in speaking with Thomason, but that he did tell Thomason "that Miami Air had indicated to Air Advantage that one of the reasons that [Miami Air was] not able to participate with the White House or provide flights to the White House is that [Miami Air was] unwilling to make arrangements regarding the payments."²⁹⁸

²⁹³ Sample GJ 6/13/96 at 25.

²⁹⁴ Id. at 28-29.

²⁹⁵ Id. at 30-32.

²⁹⁶ Conser FBI Int. 7/12/96 at 1. Fischer claimed that "[he] never told Sample about being solicited for bribes from the White House Travel Office because it never happened." Fischer FBI Int. 6/10/96 at 3. Conser explained that the reason Miami Air stopped trying to get Travel Office flights was twofold, "[t]here was always a short turn around time, whereas Miami Air preferred to book their business six months in advance," and "[t]he White House Press Corps required first class amenities, including special meals." Conser FBI Int. 7/12/96 at 1.

²⁹⁷ Sample GJ 6/13/96 at 32-34.

²⁹⁸ Martens GJ 7/16/96 at 89-90. When pressed about whether he used the word "kickback," Martens responded, "I don't know what the implication of 'other arrangements' is," but "[i]t was something not good." Id. at 89-90. Martens indicated, however, that in his opinion it would have been irresponsible for Thomason to characterize this phrase as a kickback. Id. at 92.

The allegation of kickbacks was entirely without merit, as the White House's own Travel Office review, conducted by Peat Marwick, found no evidence of kickbacks.²⁹⁹ However, before the allegation was shown to be false, it was quickly disseminated to senior officials in the White House, placing the Travel Office under close scrutiny.

3. Watkins Moved Cornelius Into the Travel Office Where She Discovered Indications of Financial Irregularities.

When Watkins heard from several sources, including Thomason, that there were potential problems in the Travel Office, he already knew that Cornelius wanted to work in the Travel Office rather than working directly for him.³⁰⁰ Consequently, he moved her into the Travel Office to be his "eyes and ears."³⁰¹ Cornelius, warned by Watkins that the Travel Office might be filled with "crooks,"³⁰² began examining and copying records, and eventually found checks being written for large amounts of cash, for which there was no record reflecting an expenditure.³⁰³ Cornelius's suspicion -- which she later admitted was only speculative -- was that the employees

²⁹⁹ Herman GJ 6/20/96 at 54-55.

³⁰⁰ See Cornelius GJ 7/25/96 at 172 (stating that it was "common knowledge" by January 1993 that she wanted to work in the Travel Office); Watkins GJ 2/28/95 at 44 (Watkins noting that when he hired Cornelius both of them anticipated that she would only stay in that position for six months).

³⁰¹ Cornelius GJ 7/25/96 at 65; Watkins FBI Int. 8/10/93 at 3.

³⁰² Cornelius GJ 7/25/96 at 63. Watkins admitted that because of what he had heard from Thomason, he may have used the word "crooks" during his conversation with Cornelius. See Watkins Int. 11/22/96 at 10-11, 14, 48. Thomason said he did not recall telling Watkins the Travel Office employees were "crooks." Thomason GJ 7/17/96 at 138-39. Watkins did not tell Cornelius who his source was, although Cornelius recalled that Watkins was reading the information to her from a notebook. Cornelius GJ 7/25/96 at 63-64.

³⁰³ Id. at 63, 68-70, 71-73.

were funding lavish lifestyles beyond those typical of government employees with the cash, while Thomason and others speculated that the cash represented the "kickbacks."³⁰⁴

Watkins assigned Cornelius to the Travel Office on or about April 8, 1993.³⁰⁵ Dale said Watkins called Dale to his office and told him that Catherine Cornelius had "expressed an interest" in working in the Travel Office.³⁰⁶ Watkins told Dale that Cornelius was unhappy answering the phones and being a receptionist for Watkins's office and that Cornelius had hopes of getting into the travel business after leaving the White House.³⁰⁷ Dale said that although he was then aware of the rumors relating to Cornelius's interests in taking over the office altogether, he "was very agreeable to" having her join them.³⁰⁸ Dale figured Cornelius would work for six weeks and find out the Travel Office was not very glamorous, and then decide to move on, something Dale said he had experienced before with other new administrations.³⁰⁹

When Cornelius arrived, she says the Travel Office employees did not seem to welcome her, and they agreed they were suspicious of her.³¹⁰ Cornelius admitted, "I didn't have a whole

³⁰⁴ Id. at 101-02, 175-76.

³⁰⁵ Id. at 55-56. Cerda testified that, according to her notes, which she drafted after the firings had occurred, Cornelius moved to the Travel Office around April 12 or April 15. Cerda GJ 7/1/96 at 83.

³⁰⁶ Dale GJ 7/9/96 at 89 (Dale places the timing of this conversation at the last week of March 1993); see also Watkins GJ 2/28/95 at 44-45 (discussing his conversation with Dale).

³⁰⁷ Dale GJ 7/9/96 at 89.

³⁰⁸ Id. at 90-91.

³⁰⁹ Id. at 91-92, 70-71.

³¹⁰ Cornelius GJ 7/25/96 at 61; Wright GJ 7/9/96 at 25; Cerda GJ 7/1/96 at 96-98; Dreylinger GJ 6/6/96 at 5-8; McSweeney GJ 7/9/96 at 16; Maughan GJ 7/9/96 at 10; Brasseux GJ 7/9/96 at 11.

lot to do" and "I wasn't very good at" the computer tasks they did give her.³¹¹ Cornelius also "let everybody know that she was a cousin of the President."³¹² "She had remarked to some of the other guys that she spoke to the President at least once or twice a day."³¹³

Watkins admitted he told Cornelius to "'keep her eyes and ears open,'" meaning that she should pay attention to conversations in the [Travel Office]."³¹⁴ Watkins said he gave these instructions "[b]ecause we were going through departmental studies and doing as any manager would do, sort of an assessment of operations in the areas that I was responsible for," and he wanted her to write a factual report.³¹⁵ Cornelius was anxious to assume her role³¹⁶ in the Travel

³¹¹ Cornelius GJ 7/25/96 at 60. Dale said Cornelius spent most of her time out of the office, and told him she was working on a special project for Harry Thomason and the First Lady. Dale GJ 7/9/96 at 104-05.

³¹² Maughan GJ 7/9/96 at 10.

³¹³ McSweeney GJ 7/9/96 at 18.

³¹⁴ Watkins FBI Int. 8/10/93 at 3; see also Stern's notes of Watkins's White House Travel Office Management Review Interview 6/3/93, OIC Bates No. 210-DC-00000598 at 600; Watkins GJ 2/28/95 at 46-47; Cerda GJ 7/1/96 at 83 ("Watkins asked her, when she went over, to sort of observe, keep her eyes and ears open").

³¹⁵ Watkins GJ 2/28/95 at 47. Watkins told the GAO a similar story:

Mr. Watkins asked Ms. Cornelius in early April to report to him by May 15 about how the Travel Office operated, how the office could be reorganized, how it should function, and whether staff could be reduced. The report was based on her observations. Mr. Watkins initially did not send Ms. Cornelius to the Travel Office to do the report or to investigate the allegations. She was sent there to facilitate White House staff travel. Ms. Cornelius was a business major in college and had worked in travel during the campaign. Mr. Watkins did not ask Mr. Dale for such a report because he "knew how Dale operated" the office.

Watkins GAO Int. 12/9/93 at 6.

³¹⁶ See Cerda GJ 7/1/96 at 96-98; Cornelius GJ 7/25/96 at 66; Gearan GJ 7/11/96 at 25; see also Gearan's notes undated, OIC Bates No. 542-DC-00030492.

Office because she wanted to prove to Watkins she could accomplish the task he set out for her.³¹⁷

The Travel Office employees soon became suspicious that Cornelius was spying on them.³¹⁸ Shortly after Cornelius moved over to the Travel Office, she began reviewing and copying Travel Office records in the evenings after the other employees were gone.³¹⁹ Watkins told the FBI that he "did not instruct Cornelius to look through records or make copies of any documents."³²⁰ Cornelius's testimony, however, indicated that he was certainly aware of it, because one night while she was reviewing Travel Office bank statements in Watkins's office he asked if she had found anything yet.³²¹ Cornelius ultimately found a number of checks for several thousand dollars made out to cash.³²² When Cornelius looked through the relevant trip file, however, she found no corresponding receipts, so she began copying numerous records she believed showed cash expenditures lacking proper accounting.³²³

³¹⁷ Cornelius GJ 7/25/96 at 65-66. Cornelius testified that in response to Watkins's request she talked to Craig Livingstone, then head of White House security, and asked him if he knew of any criminal activity by the Travel Office employees. Cornelius recalled that Livingstone said he would check on it, but they never spoke about it again. Id. at 67.

³¹⁸ Cerda GJ 7/1/96 at 97-98; see, e.g., Wright GJ 7/9/96 at 25 (stating "[S]he was just there to gain as much information as she could about us and our office. To spy, if you will"). Nevertheless, in Cornelius's view, what caused her to feel "uncomfortable" was the Travel Office employees and not her covert mission. Cerda GJ 7/1/96 at 98.

³¹⁹ Cornelius GJ 7/25/96 at 69, 72-73; Cerda GJ 7/1/96 at 91-93. Cerda testified that Cornelius was uncomfortable with this task and felt that, in any event, Watkins never described to Dale what Cornelius's role was in the Travel Office. Cerda GJ 7/1/96 at 97.

³²⁰ Watkins FBI Int. 8/10/93 at 3.

³²¹ Cornelius GJ 7/25/96 at 69-70.

³²² Id.

³²³ Id. at 72-73.

Dale's assistant, Gary Wright, surmised that Cornelius was up to something in late April when the copy machine jammed, and the technician who fixed it found a copy of an almost two-year-old check to Pan Am.³²⁴ When Wright confronted Cornelius, she denied making the copy and suggested that perhaps the office needed to change its locks.³²⁵ Wright then put all records relating to payments and money into a locked cabinet, preventing Cornelius from returning the documents that she had already taken home to review.³²⁶ She kept the documents that she had already taken at the apartment she shared with Clarissa Cerda.³²⁷

4. Harry Thomason Pressed His Travel Office Concerns With the President, the First Lady, and David Watkins.

Harry Thomason took advantage of his access to senior officials in the White House and Mrs. Clinton to bring allegations of misconduct in the Travel Office to their attention. He spoke directly about the Travel Office to President Clinton, Mrs. Clinton, and David Watkins. As a result, the Travel Office and its operations became a matter of interest and significance to senior members of the new Administration and were subject to heightened scrutiny.

³²⁴ Dale GJ 7/9/96 at 94-96; Wright GJ 7/9/96 at 25-28; Cornelius GJ 7/25/96 at 73.

³²⁵ Dale GJ 7/9/96 at 94-97.

³²⁶ Id. at 98-99; Cornelius GJ 7/25/96 at 75-76.

³²⁷ Cornelius GJ 7/25/96 at 76. Cerda testified that when the copier jammed, Cornelius was concerned "because she felt she had been doing what David asked her. And she was keeping her eyes and ears open. Allegations had been -- had surfaced, and . . . she wanted to be able to fulfill her mission with David. And this might hinder it." Cerda GJ 7/1/96 at 96.

a. Thomason Spoke to President Clinton and David Watkins About the Martens-Dale Phone Call and Suspicions of Criminality.

Armed with Martens's charge of potential illegal activity in the Travel Office,³²⁸

Thomason told President Clinton sometime in the early Spring that there was a problem in one of the executive departments, but that instead of bothering the President with further details, he would notify the appropriate officials.³²⁹ Thomason then informed Watkins that he had heard about possible illegality in the Travel Office³³⁰ and complained to Watkins "about the non-competitive bidding [for press charters] . . . and the fact that [Dale] was rude."³³¹ Thomason said that even though he had taken no action after initially learning of the Dale-Martens phone call, he could not let it go.³³² Thomason explained that he used to be a high school civics teacher, and the unfairness of not having bids for the Travel Office was something "periodically [he] would think about . . . and get mad over again."³³³ Watkins told Thomason he was already looking into how the Travel Office worked.³³⁴

Watkins also recalled his conversation with Thomason, saying that sometime in April 1993, Thomason complained about the Dale-Martens call, told Watkins "that the Travel Office

³²⁸ Thomason GJ 7/17/96 at 49.

³²⁹ Id. at 43.

³³⁰ See Thomason GJ 7/17/96 at 77-78, 88-89.

³³¹ Thomason GJ 7/17/96 at 76.

³³² Id. at 72.

³³³ Id. Thomason admitted that "some days later" he and Martens figured out that the Travel Office "did all the things TRM did too" so that "it was apparent there was no place for TRM." Id. at 42-43.

³³⁴ Id. at 77.

was using only one charter operator -- UltraAir," and described "rumors that the Travel Office was receiving kickbacks from airlines" ³³⁵ In an interview with the FBI in August 1993 -- the interview closest in time to the events in question -- Watkins's description of his conversation with Thomason was recorded as follows:

During the conversation between WATKINS and THOMASON in early April, THOMASON stated DARNELL MARTENS, a partner in TRM, had unsuccessfully attempted to solicit business with the [Travel Office] through DALE. THOMASON further stated he had heard from others in the air charter business DALE was not interested in accepting new business. In addition, THOMASON told WATKINS many people in the industry knew individuals in the [Travel Office] had been "on the take" for years. WATKINS took no notes of the conversation. He told THOMASON all of the White House offices were under review and CORNELIUS was working in the [Travel Office] and he would discuss the situation with her. THOMASON stated the individuals working in the [Travel Office] should be fired. He further stated that by terminating the individuals from employment, the result would be favorable news stories showing wrongdoing had be[en] discovered and handled. ³³⁶

Thus, the erroneous allegation that Billy Dale and/or others in the Travel Office were receiving or soliciting "kickbacks," ³³⁷ which originated with Sample and Martens, passed through Thomason and then in some form to Watkins.

³³⁵ Watkins GAO Int. 12/9/93 at 4-5; see also Watkins GJ 2/28/95 at 36-38 (testifying that Thomason complained of "kickbacks," "[I]t was his [Thomason's] understanding that it had been going on for years; that some of the guys in the Travel Office were getting paid off by other charter companies").

³³⁶ Watkins FBI Int. 8/10/93 at 3 (capitalization in original).

³³⁷ Thomason said he did not recall the words "kickback" or "bribe" being used until after the firings. Thomason GJ 7/17/96 at 93-94; see also Thomason GJ 7/17/96 at 91 ("I remember words like brouhaha being used . . . but I don't specifically remember kickback being used. But that is possible"); Thomason GJ 7/17/96 at 90 ("kickback" was "[s]ort of a product of all the buzz just going on in all these meetings"). Thomason made similar denials in his deposition before the staff of the House Committee on Government Reform and Oversight. See Thomason House Depo. 5/17/96 at 136, 146-47, 183, 188, 204. Thomason said he would have added "alleged" if he said "kickback." Thomason GJ 7/17/96 at 102. Watkins was not certain whether Thomason said "kickback," but said illegality was stressed with words like "crooks." See Watkins Int. 11/22/96 at 10-14. Catherine Cornelius, Bruce Lindsey, and Jennifer O'Connor

b. Thomason Spoke About the Travel Office Issue With the First Lady.

Thomason addressed his concern about illegal activity in the Travel Office not only to Watkins and the President, but also to the First Lady. Thomason testified that he had a total of three conversations with Mrs. Clinton about the Travel Office before the firings,³³⁸ though he could not recall the precise dates.³³⁹ Thomason described the first conversation as follows:

credited Thomason as their source for the kickback allegation. Cornelius GJ 7/25/96 at 89; Lindsey GJ 8/1/96 at 11, 14-15, 31-32; O'Connor GJ 6/20/96 at 15. George Stephanopoulos and Dee Dee Myers could not recall whether Thomason mentioned kickbacks. Stephanopoulos GJ 7/2/96 at 20; Myers GJ 7/23/96 at 24-25, 94-95. Notes from Bill Kennedy's June 1993 White House Travel Office Management Review interview recorded that Kennedy said Thomason told him someone in the Travel Office approached UltraAir about a kickback. Holton's notes of Interview 6/8/93, OIC Bates No. 542-DC-00014724 at 14725. Patsy Thomasson did not recall Thomason saying "kickback." Thomasson GJ 7/24/96 at 165-66. Vince Foster's notes showed he and Thomason discussed the kickback allegation. Foster's notes 5/12/93, OIC Bates No. 210-DC-00000919. Thomason denied the conversation with Foster even occurred. Thomason GJ 7/17/96 at 107. In any event, there is no dispute the word was used many times by those in the White House examining the Travel Office, and that as a result of Thomason's intervention, the allegation was communicated to the FBI. See, infra, at Subsection (D)(2)(3).

³³⁸ Thomason GJ 7/17/96 at 125-31. Thomason's best guess was they occurred sometime between May 10 and May 19. Id. at 127, 152.

³³⁹ Thomason explained he did not recount any of his conversations with Mrs. Clinton to Podesta and Stern for the White House Travel Office Management Review during their interview of him on May 27 because:

[T]hey were two less than one minute conversations [that] I really didn't consider it significant. It was just sort of hall talk, so to speak. Walking down the hall and just having a conversation. And I don't remember that they ever asked me anything now, to the best of my knowledge.

Id. at 148.

When Podesta was questioned in front of the grand jury, he was asked:

Q: Did Mr. Thomason at any time during the interview on May 27, 1993 mention to you that he had spoken with Mrs. Clinton about the White House Travel Office?

A: No.

M[rs]. Clinton and I were going -- we were walking down the hall together and I mentioned something about there was something going on in the Travel Office. And it was about that brief. And she said, "Oh, really. Well just tell them to stay on it." Or something to that effect.³⁴⁰

When questioned whether he provided any further details to Mrs. Clinton, Thomason said he told Mrs. Clinton that "[t]here may be some cause for alarm."³⁴¹ The entire conversation with Mrs. Clinton took less than thirty seconds³⁴² and when questioned further about the details of precisely what Mrs. Clinton said during this brief conversation, Thomason stated:

Q: Did you specifically ask him that question?

A: No.

Q: Did you think to ask him that question?

A: No.

Podesta GJ 7/18/96 at 16. Stern "[could not] recall" whether he had asked Harry Thomason about Thomason's conversations with the First Lady but later conceded that "[he and Podesta] probably did not ask." Stern GJ 7/10/96 at 88.

³⁴⁰ Thomason GJ 7/17/96 at 126. Thomason further testified that he presumed that Mrs. Clinton was referring to David Watkins or the White House management staff when she said, "tell them to stay on it." Id.

³⁴¹ Id. Thomason recounted the conversation somewhat differently in his deposition before the House Committee staff, as follows:

I did have a conversation with the First Lady, just a brief conversation in a hallway, to the best of my recollection. . . . Well, we were talking about other things, walking along the hallway; and I just said, You know, it looks to me like the Travel Office situation would bear some looking into, or something to that effect. And I just -- wherever I was going, I got there at that moment, and then she just made some rather noncommittal statement, and I don't remember what, and continued to her office.

Thomason House Depo. 5/17/96 at 185.

³⁴² Thomason GJ 7/17/96 at 127.

She said something to the effect of, "Good, check on it." Or, "Have them check on it. Have them get to the bottom of it." Or something to that effect. It was like one sentence, because we had arrived at wherever our destination was then, and she went into a meeting and I went somewhere else.³⁴³

Later that week, both conversed again:

[W]e were again walking down the hallway, and I said, "Looks like there is possibly some wrongdoing and they are working on it. And I am sure they will post you." Or something to that effect.³⁴⁴

Thomason presumed he told Mrs. Clinton that David Watkins was the person who was working on the Travel Office matter.³⁴⁵ According to Thomason, Mrs. Clinton responded as follows:

She said, "Well if there is something going on don't -- tell them, or they should not let it get out of hand, they should solve the problem and fix the problem." Or something to that effect. That is paraphrasing, because that is the best I can remember.³⁴⁶

³⁴³ Id. at 127-28.

³⁴⁴ Id. at 128.

³⁴⁵ Id.

³⁴⁶ Thomason GJ 7/17/96 at 128-29. Later in his testimony, Thomason indicated that Mrs. Clinton said, "Well if there is anything bad going on you should get to the bottom of it." Id. at 133. Even later in his testimony, Thomason recalled additional details of the conversation, and testified that Mrs. Clinton said, "If something did happen to these people how would we do the next trip?" Id. at 135. Thomason stated he believed there was an expectation that if evidence of wrongdoing in the Travel Office was established, then the employees would be fired. Thomason further testified he informed Mrs. Clinton that people were available who could handle the Travel Office operations. Id. at 136-38. At the conclusion of Thomason's testimony, in response to additional questions regarding this conversation, Thomason testified that Mrs. Clinton stated, "'If there is a problem then -- and there is mismanagement,' or something to that effect, '-- then it should be fixed and they should deal with it rather quickly.'" Id. at 154.

When Thomason was deposed by the House Committee staff, he described this conversation as follows:

[T]he second conversation where it was more detailed, she said they ought to be gotten out, but what would you do about trips? I said there are people that can do the job. That is the best of my recollection.

The third brief interaction occurred when Thomason was in Mrs. Clinton's office discussing a personal matter, and Vince Foster, then Deputy White House Counsel, "came in and said something, that he needed to see her, and she made a statement about, 'What's going on in the Travel Office?' and he said, 'you guys talk, I'll talk to you later.'"³⁴⁷ Thomason thought Foster might have told Mrs. Clinton, "'We're on top of it.'"³⁴⁸ Thomason contended there was no further discussion of the Travel Office between he and Mrs. Clinton in that or any other conversation.³⁴⁹

Mrs. Clinton also recalled this conversation with Thomason:

Q: Do you recall whether Harry Thomason was ever present in a conversation you had about the Travel Office at which Mr. Foster might also have been present?

....

A: I think that Mr. Thomas[on] was in my office on the first occasion when Mr. Foster came in to visit with me about something. But I don't recall Mr. Thomas[on] being part of the conversation, because that was a very brief aside, the conversation that took place.³⁵⁰

Thomason House Depo. 5/17/96 at 219.

³⁴⁷ Thomason GJ 7/17/96 at 107, 129.

³⁴⁸ Id. at 129.

³⁴⁹ Thomason GJ 7/17/96 at 129-30. Thomason had dinner with Mrs. Clinton and Diane and Jim Blair, friends of the Clintons from Arkansas, the evening of May 13, but said they did not discuss the Travel Office. Id. at 116-17.

³⁵⁰ H. Clinton Depo. 7/22/95 at 11. During the interview process for the White House Travel Office Management Review, Mrs. Clinton told John Podesta that although "she thought she might have talked to" Thomason about the Travel Office, "she couldn't place that conversation specifically on a specific date." Podesta GJ 7/18/96 at 71. Mrs. Clinton also told Podesta and Stern that she was not sure if it was Harry Thomason or a staff person who had originally told her about potential problems in the Travel Office. Id. at 70; Stern GJ 7/10/96 at 157.

5. Thomason Represented the Substance of His Conversations With Mrs. Clinton to Senior White House Staff.

Watkins said that around May 12, Thomason "said he had talked to Mrs. Clinton at some time" about the Travel Office situation.³⁵¹ According to Watkins's contemporaneous notes, Thomason returned to Watkins's office and told Watkins that "he bumped into Hillary [and] she's ready to fire them all that Day."³⁵² Watkins claimed that he recalled Thomason's statement to him even "today."³⁵³ Watkins repeated a variation of this statement to the FBI.³⁵⁴ Thomason denied making this statement,³⁵⁵ but did remember telling Watkins "the First Lady said, 'If there is something wrong going on it should be dealt with,'" that she wanted them to get to the bottom of the Travel Office problem.³⁵⁶

During the OIC's investigation of Mr. Foster's death, Watkins testified, "I recall the gist that Mr. Thomason told me he had talked to Mrs. Clinton and that she was very interested. It was on her antennae."³⁵⁷ Watkins responded, "Yes, I think so," when asked whether he also recalled "Mr. Thomason having told [him] that Mrs. Clinton had said to [Thomason] that the

³⁵¹ Watkins GJ 2/28/95 at 51.

³⁵² GJ 95-2 Exh. 164 (emphasis and capitalization in original).

³⁵³ Watkins Int. 11/22/96 at 15.

³⁵⁴ Watkins FBI Int. 8/10/93 at 3.

³⁵⁵ See Thomason GJ 7/17/96 at 133-34. According to undated notes provided in August 1996 by the White House that reflected Thomason's discussions with his own counsel regarding his conversation with Mrs. Clinton, Thomason informed Watkins that the Travel Office employees should be replaced and that Mrs. Clinton "shared this view." See OIC Bates No. 542-DC-00037067.

³⁵⁶ Thomason GJ 7/17/96 at 133, 142.

³⁵⁷ Watkins GJ 2/28/95 at 51.

people in the Travel Office should be fired," or at least that her desire to have the Travel Office people terminated "was the implication" Watkins got from Thomason's statement.³⁵⁸ In subsequent testimony and writings Watkins sometimes attributed the "pressure" he felt to act in large part to Thomason and his frequent citation to the First Lady.³⁵⁹

Catherine Cornelius said, "[I]t became clear that Harry was having dialogues with Mrs. Clinton" because "he was telling us -- me, whoever, that he was talking with Mrs. Clinton about these issues."³⁶⁰ According to Cornelius, Thomason "said basically, I've told the First Lady about what's going on here. You know, and she's unhappy. This is not something that she wants going on in this White House, or criminal activity, or things like that. . . . I think he was just saying, she's unhappy with this and she doesn't want anyone to get hurt. It was more sort of, she's concerned."³⁶¹ Cornelius said that Thomason told her on at least one occasion, "I'm going to call Hillary, I'll put a call into her, I'm having dinner with her tonight. So I'll, you know, let her know what's going on. Or, I'm going to keep her abreast of this situation."³⁶² Cornelius told Cerda "that Harry had briefed the First Lady on some of the -- some of the on goings of the White House Travel Office," and that Cornelius "saw it as a positive thing that Harry had told the First

³⁵⁸ Id. at 51, 57. Thomason said it is "impossible" that he "told David Watkins that, because that is not what M[r]s. Clinton told me." Thomason GJ 7/17/96 at 134.

³⁵⁹ See, infra, at Subsection (D)(4)(discussing Watkins's explanations of "pressure").

³⁶⁰ Cornelius GJ 7/25/96 at 96.

³⁶¹ Id. at 96-97.

³⁶² Id. at 120-21.

Lady."³⁶³ Steve Davison of World Wide Travel also remembered Thomason citing Mrs. Clinton's views on the Travel Office.³⁶⁴

D. The Events of April -- May 1993.

In late April 1993, Thomason returned to Washington. His return coincided with Cornelius's discovery of fiscal mishandling of the Travel Office cash accounts. As a result, beginning in mid-May, senior White House officials devoted substantial attention to the Travel Office. From May 12 through May 19, 1993, more than a dozen meetings occurred; the White House through Associate White House Counsel William Kennedy called in the Federal Bureau of Investigation ("FBI") to conduct a criminal investigation; and the accounting firm of Peat Marwick was hired to audit the Travel Office's books. In the end, on May 19, 1993, the seven White House Travel Office employees were summarily dismissed.

1. In Late April or Early May, Thomason Returned to Washington and Once Again Raised the Issue of Illegality in the Travel Office With Watkins.

On April 29, 1993, Thomason flew to Washington with Markie Post-Ross, a television actress and friend of Thomason's, to attend the White House Correspondents' Association Dinner.³⁶⁵ Ms. Post-Ross said that during their trip Thomason told her he was concerned that his

³⁶³ Cerda GJ 7/1/96 at 161, 168.

³⁶⁴ Todd Stern's White House Travel Office Management Review interview notes for Davison refer to Thomason's statements regarding the First Lady's views on the Travel Office under the heading, "Info SD heard from CC or from [World Wide's] Fan [Dozier] or Betta [Carney] based on CC's comments," the notes state in pertinent part, "Approx. 2-3 days before PM [Peat Marwick] brought in HT [Harry Thomason] JE [Jeff Eller] GS [George Stephanopoulos] HRC [Hillary Rodham Clinton] furious [and] ready to throw them out that day (2-3 days before PM)." Stern's notes of Davison Int. undated, OIC Bates No. 542-DC-00018432-33 (underscore in original). See Stern GJ 7/10/96 at 126, 134, 185 (identifying the initials in his notes).

³⁶⁵ Thomason GJ 7/17/96 at 66; see also GJ 95-2 Exh. 208 (Thomason's date book). Also at this point, Thomason was consulting with the White House on staging presidential

partner had been denied permission to bid on the Travel Office, though she had no idea why he told her this.³⁶⁶ Thomason testified that at the end of the dinner, George Condon, the Association president, remarked that the press could not continue following the President if the cost of their travel did not go down.³⁶⁷ Thomason said this prompted him to ask Watkins whether Watkins had followed up on Thomason's earlier complaint of potential criminal activity.³⁶⁸

On May 10, 1993, Thomason met with Watkins at the White House.³⁶⁹ Thomason provided Watkins with a copy of Martens's March 3, 1993 memorandum containing derogatory information about the Travel Office.³⁷⁰ Watkins told Thomason he wanted him to meet Catherine Cornelius, and likewise instructed her to meet with Thomason.³⁷¹

events, for which he was given a pass granting him access throughout the White House complex and an office in the East Wing. White House Travel Office Management Review at 6.

³⁶⁶ Post-Ross GJ 7/1/96 at 8-9. Thomason and Post-Ross had dinner with the Clinton family on April 30, but Post-Ross said that Thomason did not mention any Travel Office issues. Id. at 18-19, 22.

³⁶⁷ Thomason GJ 7/17/96 at 75; see also Myers GJ 7/23/96 at 133.

³⁶⁸ Thomason GJ 7/17/96 at 75-78.

³⁶⁹ Thomason GJ 7/17/96 at 77. Thomason was in Washington from May 10 through May 14, 1993. Id. at 73; see also GJ 95-2 Exh. 209 (Thomason's date book).

³⁷⁰ Thomason testified that, at Watkins's request, he asked Martens to fax the document to Thomason at the White House on May 10, 1993. Thomason GJ 7/17/96 at 75, 81-82, 144-45; Martens GJ 7/16/96 at 74-75. See also Watkins FBI Int. 8/10/93 at 3 (confirming that "THOMASON telephonically contacted MARTENS and requested that he facsimile a memo concerning the attempts of TRM to obtain White House business")(capitalization in original); see also Watkins GJ 2/28/95 at 50-51 (testifying that he received a fax at some point regarding a memo from Martens).

³⁷¹ Thomason GJ 7/17/96 at 76, 78; Cornelius GJ 07/25/96 at 78. With the exception of the date he recalls for this conversation, Watkins's description of the substance of this conversation with Thomason is consistent with Thomason's testimony that Watkins told Thomason to meet with Cornelius. Watkins's August 10, 1993 FBI interview report states that "[o]n May 12, THOMASON went to WATKINS'S office and asked him what had been

2. Wednesday, May 12, 1993.

On May 12, 1993, Thomason first met with Cornelius to discuss her suspicions about activity in the Travel Office. Thomason, Cornelius and Martens then briefed Watkins on Cornelius's suspicions and Martens's information. As a result of that meeting, Watkins (accompanied by Cornelius and Thomason) reported their suspicions to Vince Foster and William Kennedy in the White House Counsel's Office.

a. Thomason Met With Cornelius.

On May 12, 1993, at 9:26 a.m., Cornelius e-mailed a co-worker, "I have a meeting with Harry Thomason at 10 a.m. this morning to discuss the future of this office. It could be over very soon."³⁷² Thomason and Cornelius met for about ten minutes in his White House East Wing office.³⁷³ Cornelius shared what she had learned surreptitiously reviewing and copying records,³⁷⁴ including her self-admitted speculation that the travel employees' lifestyles were too

ascertained about the activities in the [Travel Office]. WATKINS told THOMASON that CORNELIUS was due to make a report about the activities in the [Travel Office] by May 15 and he should speak with her." Watkins FBI Int. 8/10/93 at 3 (capitalization in original); see also Watkins GJ 2/28/95 at 50 (testifying that when Thomason approached him about the Travel Office, Watkins told Thomason that "he was welcome [to] talk to her [Cornelius]"). The May 12 date recalled by Watkins apparently is incorrect based on Thomason's recollection of the conversation and on Cornelius's testimony that Watkins told her on May 10 to meet with Thomason. Cornelius was going to Chicago and proposed to Watkins that she and Thomason would meet when she returned on May 12. Cornelius GJ 7/25/96 at 81.

³⁷² Id. at 85 (reading GJ 95-2 Exh. 351); Lufrano GJ 7/17/96 at 13 (Cornelius e-mail to Lufrano 5/12/93, OIC Bates No. 542-DC-00034774). Cornelius complained that "people like to read [this e-mail] and say, it could be over very soon for the Travel Office employees. But that's not what I meant. I meant, it could be over very soon, the whole drama that's unfolding." Cornelius GJ 7/25/96 at 87-88.

³⁷³ Id. at 88, 91.

³⁷⁴ Id. at 89-91.

comfortable for government workers.³⁷⁵ Thomason said Cornelius told him that "[Travel Office employees] had deposited checks into their own personal account, at least one of them had."³⁷⁶

Cornelius also complained "that she had gone over to the Travel Office, they had put her in a sound proof office, you know, away from the rest of the people in the Travel Office. And their animosity grew"³⁷⁷ Cornelius said Thomason told her about a mysterious Georgetown bank account being used by the Travel Office³⁷⁸ and that Travel Office employees were soliciting kickbacks.³⁷⁹

³⁷⁵ See Cornelius GJ 7/25/96 at 175-76; McSweeney GJ 7/9/96 at 11-14 (testifying that he owned a sixteen year old mare and its offspring); see also Dreylinger GJ 6/6/96 at 16-17 (testifying that Billy Dale owned a lake house on Lake Anna, Virginia, and that McSweeney had taken several trips to Europe with his wife, the owner of a successful travel agency). But see Dreylinger GJ 6/6/96 at 17 (testifying that he did not have reason to believe that any Travel Office employees were "living beyond their means").

³⁷⁶ Thomason House Depo. 5/17/96 at 165.

³⁷⁷ Thomason GJ 7/17/96 at 80.

³⁷⁸ Cornelius GJ 7/25/96 at 90.

³⁷⁹ Id. at 89-91. Thomason recalled this conversation differently. He testified that he did not recall the word "kickback" being used during this conversation and that he knew nothing about a Georgetown bank account. Thomason GJ 7/17/96 at 89, 91. Cerda said Cornelius told her that Harry Thomason mentioned rumors of Travel Office kickbacks from Miami Air during a meeting Cornelius had with Thomason. Cerda GJ 7/1/96 at 86. Jennifer O'Connor also testified that Thomason told her "he believed the staff of the Travel Office were soliciting kickbacks, and that he thought that it would be a great press story for the Clintons if they were able to . . . expose corruption in the Travel Office." O'Connor GJ 6/20/96 at 15. In August 1996, the White House produced handwritten notes recounting an interview of O'Connor where she claimed Thomason told her he had evidence that the Travel Office employees were "ripping us off." See OIC Bates No. 542-DC-00036980.

b. Cornelius, Thomason, and Martens Informed Watkins of Their Suspicions.

Later on May 12, Thomason, Martens,³⁸⁰ and Cornelius met with Watkins, and possibly Patsy Thomasson, in Watkins's office for about 45 minutes.³⁸¹ Martens repeated his earlier conversation with Billy Dale.³⁸² Cornelius reported the suspicious cash transactions that were not properly recorded.³⁸³ According to Cornelius, Thomason told the group he had informed Hillary Clinton there were problems in the Travel Office and that Mrs. Clinton was unhappy.³⁸⁴ Cornelius also said that, either at this meeting or one the following day, Thomason said that Mrs. Clinton was concerned about the problems in the Travel Office and wanted them resolved.³⁸⁵ Harry Thomason pulled a copy of

³⁸⁰ Martens testified that while in Washington on May 12 to meet with Jack Kelly at OMB, he asked Thomason's assistant Bobbie Ferguson to schedule lunch with Thomason "[b]ecause we hadn't seen each other for quite a while." Martens GJ 7/16/96 at 77-78. Martens said that when he showed up at Thomason's White House office before lunch, Thomason told him they were going to meet with David Watkins so that Martens could recount his conversation with Billy Dale. Id. at 78-79.

³⁸¹ The participants had varying recollections of who attended and what was said. Thomason claimed that he attended a meeting with Watkins, Cornelius, and Martens, but made no mention that Patsy Thomasson was present. Thomason GJ 7/17/96 at 96-97. Martens recalled that the meeting included himself, Thomason, Cornelius, and Watkins. Martens GJ 7/16/96 at 81. Cornelius said, "it's hard for me to believe that [Patsy Thomasson] wasn't" present. Cornelius GJ 7/25/96 at 99. The White House Travel Office Management Review states that Thomason, Cornelius, and Watkins were joined by Martens at the second morning meeting on May 12. GJ 95-2 Exh. 68 at 7. Thomasson thought that she attended. Thomasson GJ 7/24/96 at 21-24. Thomasson could not place a date for this meeting when she testified, but there is no evidence of another meeting to which she could have been referring. See also Watkins GJ 2/28/95 at 47-48 (providing context to confirm Thomasson's memory).

³⁸² Thomason GJ 7/17/96 at 89-90, 97; Martens GJ 7/16/96 at 81-82.

³⁸³ Cornelius GJ 7/25/96 at 99.

³⁸⁴ Id. at 96-97.

³⁸⁵ Cornelius GJ 7/25/96 at 95-97. Cornelius testified that Thomason told her at some

Martens's March 3, 1993 memorandum³⁸⁶ out of his sport coat, showed it to Watkins, and then put it back after the group discussed it.³⁸⁷ When the meeting concluded, Watkins told Cornelius to prepare a contingency plan to operate the Travel Office.³⁸⁸ Thomason asked Martens to see if Penny Sample could get a charter for a trip coming up on Sunday, May 16.³⁸⁹ Notes taken of Watkins's subsequent White House Travel Office Management

point that he had informed the First Lady about the Travel Office situation, and that she was unhappy. She recounted what Thomason said, "This is not something that she [Mrs. Clinton] wants going on in this White House, or criminal activity, or things like that. You got the impression that he was keeping her abreast because A, they have a personal relationship, B, Harry, although he was working for different people in the White House, didn't have like someone to report to or tell this to, and that's the person he was going to talk to about it." *Id.* at 96-97.

³⁸⁶ Martens GJ 7/16/96 at 80-82; Cornelius GJ 7/25/96 at 100. The report of Watkins's GAO interview refers to this meeting as follows:

On May 12, Mr. Watkins met with Mr. Thomason, Mr. Martens, and Ms. Cornelius regarding the Travel Office. This was the only time that Mr. Watkins met with Mr. Martens. Mr. Martens brought in his memo, which appears in the management review, and discussed it. Mr. Thomason had requested the meeting as a follow-up to the May 10 meeting.

Watkins GAO Int. 12/9/93 at 9; see also White House Travel Office Management Review at Exh. G (July 2, 1993)(Memorandum from Martens to Thomason 3/3/93, OIC Bates No. AL-DC-00007620 (with fax cover sheet and summary attachment)) and Sample GJ 6/13/96 at 40 (establishing the date of the memo as March 3, 1993). In an interview with the FBI on September 30, 1993 Watkins mistakenly stated that this meeting on May 12, 1993 included Jeff Eller. Watkins FBI Int. 9/30/93 at 1.

³⁸⁷ Martens GJ 7/16/96 at 82. Watkins and Cornelius both already had their own copies. Cornelius GJ 7/25/96 at 101.

³⁸⁸ Cornelius GJ 7/25/96 at 106.

³⁸⁹ Thomason GJ 7/17/96 at 99; Martens GJ 7/16/96 at 98. At approximately 12:20 p.m. on May 13, 1993, Martens, who had returned to his office in Cincinnati, faxed the following message to Thomason at the White House:

1. 30 day Billing Cycle No Problem
2. Aircraft are being reviewed for Sun., if needed.

Review interview indicated that Thomason and/or Cornelius also mentioned the employees' perceived high lifestyle and a non-government bank account being used for certain Travel Office funds.³⁹⁰

Watkins also told Cornelius to telephone Betta Carney, the owner of World Wide Travel, to see if World Wide could send travel agents to Washington to assist in running the Travel Office.³⁹¹ Cornelius e-mailed Cerda, "I need to start thinking about how you officially bring in

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3. Penny & I can be at White House to assist "C" as needed to begin operations.
 4. Call me with update when convenient.

GJ 95-2 Exh. 199. Martens explained that when Thomason asked him to find out if Sample could handle a trip scheduled for Sunday, May 16. Martens GJ 7/16/96 at 100. Thomason also asked whether a normal 30-day billing cycle was acceptable. *Id.* at 98. He further stated that "C" referred to Cornelius, whom he considered "our contact regarding the Travel Office," and that the "operations" he was referring to was the one flight on Sunday. *Id.* at 102. Martens also stated that, because he knew nothing about the possible trip when he sent the memo, Sample's review of aircraft consisted of surveying the market to determine what aircraft was available for the weekend. *Id.* at 105. The trip never took place. *Id.* at 105-07. By contrast, Sample who was involved in an unrelated legal proceeding that week, said that Martens did not reach her until the afternoon of May 14. Sample GJ 6/13/96 at 52-55.

Thomason claimed he did not know what "C" referred to, and denied that "operations" suggested the handling of more than one trip "because at the same time the White House had asked [him] to ask Mr. Martens for a list of people around the country that could come in and do this assignment." Thomason GJ 7/17/96 at 109-10. Thomason said he did not remember who asked for such a "list," but recalled that "there was a note somewhere that listed five names from around the country that they thought might be a candidate to do the job permanently." *Id.* at 109-10. The note was not obtained by the OIC.

³⁹⁰ The notes of Watkins's White House Travel Office Management Review interview referred to the May 12 meeting as follows, "HT CC came to see DW talking re lifestyle HT saying crooks . . . CC mentions Riggs Bank Acct." Notes of Watkins's White House Management Interview 6/3/93, OIC Bates No. 210-DC-00000600 (emphasis in original). Both of these concerns proved to be unfounded.

³⁹¹ Cornelius GJ 7/25/96 at 106.

someone to help."³⁹² Cornelius called Carney, who in turn told World Wide employee Fan Dozier to stand by to go to Washington.³⁹³ Carney testified she was concerned about working for the White House without any competitive bid, but Cornelius assured her the issue had been addressed.³⁹⁴

c. Watkins Informed Foster and the White House Counsel's Office of the Travel Office Suspicions.

On the afternoon of May 12, 1993, a two-part meeting convened in the White House Counsel's Office. At approximately 2:00 p.m., Cornelius, Thomason, and Watkins met with

³⁹² Cerda GJ 7/1/96 at 125 (GJ 95-2 Exh. 115)

³⁹³ Cornelius GJ 7/25/96 at 106-07; Carney GJ 6/13/96 at 35. The evidence suggests that Cornelius did not make this call until May 12, after this meeting with Watkins. Carney, however, testified that Cornelius called on Tuesday, May 11, 1993 and asked Carney to send an agent to Washington and to keep the call confidential, and indicated "that they had determined, or they were analyzing that there was some type of impropriety going on in the Travel Office." Carney GJ 6/13/96 at 33-34. Fan Dozier, a World Wide employee, said that Carney did not speak with her about the issue until May 12. Dozier GJ 6/13/96 at 12-14. Dozier flew to Washington to be on standby to assist Watkins and Cornelius. Later, at the White House's request, Carney sent two more agents, Angela Colclasure and Judith Kelley Gehrki, to Washington. Carney GJ 6/13/96 at 42; see also Kelley-Gehrki GJ 6/13/96 at 32-33; Davison GJ 6/13/96 at 42-43; Colclasure GJ 6/13/96 at 11. Fan Dozier testified that she flew to Washington on May 13 and sat in her hotel room waiting by the phone until the firings. Dozier GJ 6/13/96 at 12-15.

³⁹⁴ Carney GJ 6/13/96 at 36. World Wide's director of customer service, Steve Davison, testified that Carney told him on May 14 or May 15 that the White House counsel was "bringing us in under some sort of emergency procurement procedures." Davison GJ 6/13/96 at 42-43. Cornelius testified that at Watkins's request, she called Chris Vein in the White House Office of Administration. Vein told her that a contractor could be brought in on an emergency basis so long as there was written justification for it. Cornelius GJ 7/25/96 at 148-49.

Foster³⁹⁵ in Foster's office for about 20 minutes.³⁹⁶ After a break, the meeting reconvened at approximately 4:00 p.m.³⁹⁷

³⁹⁵ Foster's notes regarding this two-part meeting on May 12 read as follows (the first page of notes are dated May 30, 1993):

Wed 2:40 Call from DW [David Watkins] requesting mtg., explain conflict

2:45 Mtg w/ DW, HT [Harry Thomason] & CC [Catherine Cornelius] in my office

3:00 lv for haircut, set up mtg w/ CC for 4

3:55 pick up WK [William Kennedy] on way back from haircut, describe genl parameters

4:00 mtg w/ WK, DW, CC & HT in my office

6/1

Kennedy says someone -- DW -- told him that am that documents are being thrown away \$25 M ck, being aggressive to CC

\$160 M house pd off, one Ee is leaving @ 4pm on advance

6/1

(whether advise of Rts may be explanation

WK - still gathering info, how interface?]

OIC Bates No. 210-DC-00000007-00000008 (emphasis and bracketed notations, but not names, in original); see also Cornelius GJ 7/25/96 at 110-11 (confirming her presence at the meeting and, therefore, that "CC" in Foster's notes represents Catherine Cornelius).

During the search of Foster's office following his death, White House Counsel Bernard Nussbaum recovered a file regarding the Travel Office that he claimed he did not give to investigators because it related to an "ongoing matter." Nussbaum GJ 7/16/96 at 55. In mid- to late May 1994, after receiving a Fiske subpoena for Foster related materials, Nussbaum, who had since resigned, called Neil Eggleston and alerted him to the file's existence. Id. at 67-68; Eggleston GJ 7/18/96 at 115-16. Shortly thereafter, the file was turned over to DOJ's Public Integrity Division. Eggleston GJ 7/18/96 at 120-21. The above-quoted notes were in the file.

At the 2:00 p.m. meeting, by Watkins's account, Thomason repeated the information regarding "kickbacks."³⁹⁸ Cornelius also mentioned "inconsistencies in bank accounts."³⁹⁹ Thomason urged swift action in resolving the Travel Office problem.⁴⁰⁰ Cornelius said Thomason was "dramatic" and was "looking at this from like -- if I can think about, this is like, you know, a story, a production, what a great story. We've come in and found these guys that are on the take and we're going to, you know, send them home, send them packing."⁴⁰¹

Nussbaum says he did not produce the file to the GAO because it was "classic privileged work product material." Nussbaum GJ 7/16/96 at 59. The GAO, however, was never told this. Nancy Kingsbury, head of the GAO's Travel Office investigation, testified that the Foster materials fell within the parameters of her requests for documents, and that GAO was told by the White House "that there were no documents related to the White House Travel Office in Mr. Foster's office at the time of his suicide." Kingsbury GJ 6/27/96 at 37. Neil Eggleston said he personally reviewed the Foster Travel Office file and deemed it not responsive to either the GAO's request for documents or the grand jury subpoena for Foster-Travel Office documents received in conjunction with regulatory Independent Counsel Fiske's investigation. Eggleston GJ 7/18/96 at 118; Memorandum from W. Neil Eggleston, Assoc. Counsel to the Pres., to Lloyd Cutler, Special Counsel to the Pres. 7/10/94, OIC Bates No. 542-DC-00027254.

³⁹⁶ Watkins GJ 2/28/95 at 48; Cornelius GJ 7/25/96 at 101, 115-16.

³⁹⁷ Cornelius GJ 7/25/96 at 117.

³⁹⁸ See Watkins Int. 11/22/96 at 18. Cornelius thought Patsy Thomasson may have been at the 2 p.m. meeting. Cornelius GJ 7/25/96 at 110-11.

³⁹⁹ Watkins GJ 2/28/95 at 48.

⁴⁰⁰ Cornelius GJ 7/25/96 at 113-14. Thomason admitted he "advocated investigation quickly" Thomason GJ 7/17/96 at 104. Thomason denied commenting that it would be a good press story of rooting out corruption if the employees were fired; he testified rather that he said it would be a "[b]ad story if the press gets to it before you do." *Id.* at 102-03. Two months earlier, during a House deposition, however, Thomason testified: "I wanted to find a good story, and good story -- if there is a scandal in the department, then you should get to it before the press does. A good story that somebody, the head of the Travel Office, is going to be fired." Thomason House Depo. 5/17/96 at 171.

⁴⁰¹ Cornelius GJ 7/25/96 at 113.

Cornelius testified that Foster advocated a more conservative approach, and was more interested in figuring out a method to determine whether the allegations involving the Travel Office were correct.⁴⁰² Cornelius stated she was shocked that Watkins "was shirking responsibility" for the Travel Office saying, "'I'm not in charge of it, Janet Green is in charge of it We'll have to talk to her. This is her fault. She should have known these sort of things.'"⁴⁰³ Foster instructed Cornelius to go home and get the Travel Office records she had removed.⁴⁰⁴ Cornelius did not recall any mention of the First Lady during this meeting, though she did "remember Harry bringing Mrs. Clinton's name up a lot but it was more in passing, not like at formal sit down discussions."⁴⁰⁵

After this initial meeting, Cornelius and Cerda drove to their apartment and picked up the documents which Cerda described as a 12" x 15" redwell folder containing about a 1" stack of documents.⁴⁰⁶ Cornelius told Cerda that the folder contained copies of canceled checks.⁴⁰⁷

Cornelius returned to Foster's office where the meeting reconvened at approximately 4:00 p.m. with the same participants, plus Associate White House Counsel William Kennedy.⁴⁰⁸

⁴⁰² Id. at 114, 117.

⁴⁰³ Id. at 114.

⁴⁰⁴ See Cornelius GJ 7/25/96/ at 115; Cerda GJ 7/1/96 at 120.

⁴⁰⁵ Cornelius GJ 7/25/96 at 116.

⁴⁰⁶ Cerda GJ 7/1/96 at 121-22.

⁴⁰⁷ Id. at 123.

⁴⁰⁸ Cornelius GJ 7/25/96 at 115-17. Kennedy testified that sometime in the middle of May 1993, Foster stopped by Kennedy's office and asked his assistance regarding allegations of wrongdoing in an executive office of the President. Kennedy GJ 7/30/96 at 15-16. Kennedy "asked him if maybe it was the Travel Office," because Craig Livingstone, then acting Director of White House Personnel Security, had already told Kennedy in early February about rumors

Cornelius described "large checks made out to cash with no backup," and told them, "as soon as she had gotten there, people had become extremely secretive" and "there were conversations about extravagant lifestyles, houses on lakes, racehorses -- this sort of thing -- which she thought did not comport with the salaries that were being paid in that office."⁴⁰⁹ Kennedy was "certain that we saw checks made out to cash" at this meeting.⁴¹⁰

Kennedy said that Cornelius also told them she was suspicious that the Travel Office people were "either taking leave and not filing for it, or [were] just never taking a leave."⁴¹¹ He thought that Cornelius may have used the word "kickbacks" when describing the Travel Office conduct.⁴¹² Kennedy said that although he and Foster thought that Cornelius believed her information, they "approached all of this with a great deal of skepticism."⁴¹³ At the meeting Thomason again repeated the story of the Martens-Dale phone call, saying that Martens had been told "there was no way he or anybody else was going to get this business."⁴¹⁴ Thomason passed around the memorandum that Martens had drafted describing the conversation, and gave Kennedy and Foster their own copies to keep.⁴¹⁵

that the Travel Office "was not being run on the up and up." Id. at 10-16. Kennedy said Foster was surprised that he knew about it. Id. at 16. They then went to the meeting in Foster's office. Id.

⁴⁰⁹ Id. at 20.

⁴¹⁰ Id. at 22.

⁴¹¹ Id. at 52.

⁴¹² Id. at 50.

⁴¹³ Id. at 28.

⁴¹⁴ Id. at 22-24.

⁴¹⁵ Id. at 23-24. Notes of Kennedy's White House Travel Office Management Review

According to Kennedy, Foster's initial thought was to conduct an audit, but Watkins informed Foster that the White House had no audit capability.⁴¹⁶ Watkins said, "there was a general discussion on, well if this is happening, what do you do? How do you investigate something like this? I know we didn't have any audit people in the White House that we knew. How do you go about -- and that was sort of the way the conversation went: 'Well, if this is correct, what do we do about it?' And I remember some of [the] things tossed about. They said, 'Well, maybe the IRS or the Justice Department or the CIA or FBI.' And as I recall, Bill Kennedy said, 'Well, you know, I work with the FBI on these security matters. I can give them a call and see who they suggest.'"⁴¹⁷ Cornelius testified that it was clear by the meeting's end that Thomason was going to update the First Lady on the situation.⁴¹⁸

d. William Kennedy Brought in the FBI.

At the end of the 4:00 p.m. Wednesday, May 12, 1993 meeting, Foster told Kennedy to figure out how to investigate the allegations regarding the Travel Office.⁴¹⁹ "[D]umbfounded by a lack of audit capability in the White House,"⁴²⁰ at approximately 5:30 p.m. on May 12, Kennedy called James Bourke, an FBI agent whom he worked with on a daily basis on the

interview on June 8, 1993 reflected that Kennedy recounted that Thomason had reported that somebody in the Travel office approached UltrAir about a "kickback." Holton's notes of interview 6/8/93, OIC Bates No. 542-DC-0014724 at 14725.

⁴¹⁶ Kennedy GJ 7/30/96 at 27-28.

⁴¹⁷ Watkins GJ 2/28/95 at 59-60.

⁴¹⁸ Cornelius GJ 7/25/96 at 120-21.

⁴¹⁹ Kennedy GJ 7/30/96 at 27; Cornelius GJ 7/25/96 at 118. Thomason did not recall how the meeting ended, but testified that he "think[s] that they were going to further the investigation." Thomason GJ 7/17/96 at 105.

⁴²⁰ Kennedy GJ 7/30/96 at 32.

confirmation of Clinton appointees.⁴²¹ Kennedy told Bourke "he had an embezzlement and/or skimming of funds problem at the White House,"⁴²² and that he wanted advice on where to get audit assistance and how to handle the situation generally.⁴²³ Kennedy denied calling the FBI with the idea of inducing a criminal investigation.⁴²⁴ Bourke told Kennedy he would try to put him in touch with the proper people. Because Cornelius had told him that the Travel Office employees' treatment of her was getting worse, Kennedy asked Bourke to get back to him quickly.⁴²⁵

3. Thursday, May 13, 1993.

On Thursday, May 13, 1993, a significant amount of Travel Office related activity took place: 1) Deputy Assistant to the President, Director of Media Affairs Jeff Eller met with Thomason, Cornelius, Watkins, and, later, Press Secretary Dee Dee Myers, to urge quick action on the Travel Office; 2) the FBI met with the White House Counsel's office and conducted an initial interview of Cornelius, concluding that predication existed for beginning a criminal

⁴²¹ Bourke was, at that time, assigned to the special inquiry or "SPIN" unit which conducted background investigations for other federal entities. Bourke GJ 6/4/96 at 2-3.

⁴²² Id. at 6.

⁴²³ Kennedy GJ 7/30/96 at 32. Kennedy testified that he told Bourke there was a problem in one of the executive offices of the President, but that he was unsure what the problem was. Id. at 33-34. Bourke testified that Kennedy said the matter involved embezzlement and/or skimming of funds, but did not mention the Travel Office. Bourke GJ 6/4/96 at 6-7.

⁴²⁴ Kennedy GJ 7/30/96 at 36. Bourke testified that he thought Kennedy was calling for guidance because he had no idea how to proceed and Bourke was his counterpart at the FBI. See, e.g., Bourke GJ 6/4/96 at 6, 17, 33. FBI agent Patrick J. Foran agreed Kennedy "continuously" described himself as "looking for help, looking for advice." Foran GJ 6/4/96 at 41-42.

⁴²⁵ Kennedy GJ 7/30/96 at 38. Bourke said that Kennedy never mentioned the Travel Office specifically in any of their phone conversations. Bourke GJ 6/4/96 at 21.

investigation; 3) Mrs. Clinton discussed her concerns about the Travel Office with Chief of Staff McLarty and Vincent Foster; 4) Watkins, Foster, Thomasson, and McLarty discussed Mrs. Clinton's concerns; and 5) by the end of the day, Watkins with Foster's agreement had determined to conduct an audit of the Travel Office and had contacted Peat Marwick to retain their services.⁴²⁶

a. Jeff Eller and Harry Thomason Advocated Firing the Travel Office Staff Due to Public Relations Concerns.

The morning of Thursday, May 13, Thomason and Cornelius once again met in Thomason's East Wing Office, joined by Jeff Eller.⁴²⁷ According to Cornelius, Thomason, with his media background, and Eller, a White House press officer, agreed swift action was necessary to stay "ahead of the story."⁴²⁸ Eller and Cornelius told Thomason they were afraid that the Travel Office employees were hostile to her.⁴²⁹ Thomason, Cornelius, and Eller then joined Watkins for a meeting in Watkins's office.⁴³⁰

⁴²⁶ Myers GJ 7/23/96 at 24; Eller GJ 7/17/96 at 24; Cornelius GJ 7/25/96 at 124; Podesta GJ 7/18/96 at 52; Apple GJ 6/13/96 at 7-8; Kennedy GJ 7/30/96 at 58, 61; McLarty GJ 7/31/96 at 24, 56-57; Foster's notes undated, OIC Bates No. 542-DC-00000984 ("Attempt to reconstruct conversations with HRC"); Foster's notes undated, OIC Bates No. 542-DC-00001016-17; Thomasson GJ 7/24/96 at 31; McLarty House Depo. 7/12/96 at 24.

⁴²⁷ Cornelius GJ 7/25/96 at 123-24; Eller GJ 7/17/96 at 24-25. Cornelius asked Eller to attend the meeting because "Jeff was someone that I trusted completely." Cornelius GJ 7/25/96 at 124.

⁴²⁸ Id. at 124-25; Eller GJ 7/17/96 at 26.

⁴²⁹ Thomason House Depo. 5/17/96 at 192-93; Thomason GJ 7/17/96 at 114.

⁴³⁰ Cornelius GJ 7/25/96 at 125-26, 180; Eller GJ 7/17/96 at 37. Watkins's notes of this meeting read as follows:

May 13 - a.m. Watkins had a meeting with Thomason, Cornelius + Eller. Eller + Thomason talked about what a great story the firing of WH Travel Office was + that we had to stay ahead of the story we couldn't get behind

Eller urged the immediate firing of the Travel Office employees because he thought it would make a good press story of rooting out corruption among Bush administration holdover employees.⁴³¹ Harry Thomason also said that part of what was in his mind was "I wanted to find a good story, and good story -- if there is a scandal in the department, then you should get to it before the press does. A good story that somebody, the head of the Travel Office, is going to be fired."⁴³² Thomason said he also viewed it as a "good story" for the White House "because they had been hit many times by the press at that point, you know, rather than let the press hit them again; well, here we have discovered a scandal right in the White House, you know."⁴³³ Patsy

on this one.

GJ 95-2 Exh. 164 (emphasis in original). Later, at approximately 1:00 p.m. on May 13, 1993, Watkins again met with Patsy Thomasson and Cornelius to discuss what course of action to take, and so that Watkins and Thomasson could probe Cornelius regarding the information she had learned. Thomasson GJ 7/24/96 at 27-29.

⁴³¹ Id. at 193-95. Watkins confirmed "that early on, the people in the White House press office thought that this was going to be a positive media event." Watkins GJ 2/28/95 at 63. Kennedy testified that Foster told him at some point that he disagreed with Eller. Kennedy GJ 7/30/96 at 70 ("I think at some point, Vince mentioned that Eller . . . had taken a stance that he thought it would be a good story and that we should fire people immediately -- 'we' in this case being the White House"). He did not recall Jeff Eller urging that something be done quickly to resolve the situation. Thomason GJ 7/17/96 at 114. Eller recalls very little about the meetings he attended, but testified that he consistently advised "that if we are going to fire the White House Travel Office people that we do it quickly and get it over with, to try to minimize the potential bad press that could come out of it." Eller GJ 7/17/96 at 26, 38-40. Eller also thought the Travel Office was "costing them [the press] too much." Thomasson GJ 7/24/96 at 194. Cornelius said, "Jeff believed, like Harry did, that you had to get ahead of the story. And he believed the story was already ahead of us." Cornelius GJ 7/25/96 at 183.

⁴³² Thomason House Depo. 5/17/96 at 171; see also Thomason GJ 7/17/96 at 103 ("I didn't say 'good story if you do it,' I said, 'bad story if the press gets to it before you do.' I said, 'then you should root it out and make it a more positive story'").

⁴³³ Thomason House Depo. 5/17/96 at 135-36.

Thomasson said she, Watkins, and Foster were against firing at that point.⁴³⁴ During the meeting in Watkins's office, contingency plans were discussed. It was agreed that Cornelius would handle the Travel Office's commercial travel and Thomason would get someone to handle the charter business.⁴³⁵ Special Assistant to the Deputy Chief of Staff Dwight Holton's notes of Eller's White House Travel Office Management Review interview show that Eller told Holton and Podesta "that it was after the meeting with David that tempers got hot."⁴³⁶

Sometime Thursday morning, Eller and Thomason also went to see Myers and told her there were serious problems in the Travel Office and they were looking into it.⁴³⁷ Foster later told Podesta that Eller and Thomason were "pressing to move quickly" at this point.⁴³⁸ Foster's notes confirm that Eller briefed then White House Communications Director George Stephanopoulos, and Dee Dee Myers, on Thursday, although Foster places it in the afternoon.⁴³⁹ Foster's notes further indicate that Foster told Watkins of his earlier discussions with Harry

⁴³⁴ Thomasson GJ 7/24/96 at 36.

⁴³⁵ Cornelius GJ 7/25/96 at 126.

⁴³⁶ Holton GJ 7/2/96 at 4, 42 (providing his title and reading GJ 95-2 Exh. 155, Holton's notes); GJ 95-2 Exh. 162 (Sterns 6/3 notes in which he writes, "Eller's in VF's Face"). Eller said he could not recall having any arguments, but said, "it is possible." Eller GJ 7/17/96 at 52.

⁴³⁷ Myers GJ 7/23/96 at 24.

⁴³⁸ Podesta GJ 7/18/96 at 52.

⁴³⁹ Foster's notes undated, OIC Bates No. 210-DC-00000015. Stephanopoulos testified that he had a two minute conversation "a few days before it broke publicly" with Eller in which Eller "said there were problems in the travel office, and they were looking at taking action." Stephanopoulos GJ 7/2/96 at 4-5. Stephanopoulos said that this brief conversation with Eller was "really all" the information Stephanopoulos had about the Travel Office "before it broke" publicly when the firings were announced. *Id.* at 4. Stephanopoulos also testified that he did not remember "ever having a one-on-one conversation" with Vince Foster about the Travel Office, but remembers being in a meeting with Foster where the subject was discussed. Stephanopoulos GJ 9/8/95 at 5-6.

Thomason⁴⁴⁰ and Eller, that he informed Watkins that "we must get out of [the] middle," and that he suggested that Watkins call Eller.⁴⁴¹

Also on Thursday, someone prepared press talking points indicating that the Travel Office employees would be fired that day.⁴⁴² Eller did not recall if he prepared these talking points.⁴⁴³ However, the circumstantial evidence that he did so is strong because of his position in the White House press office and his involvement in the matter.⁴⁴⁴

⁴⁴⁰ Harry Thomason flew to Los Angeles the evening of May 14, to return on Monday, May 17. Thomason GJ 7/17/96 at 118.

⁴⁴¹ Foster's notes undated, OIC Bates No. 210-DC-00000015.

⁴⁴² Talking points on changes in White House Travel Office 5/13/93, OIC Bates No. 542-DC-00007611. The talking points read, in relevant part: "In response to requests concerning the cost of press travel, the White House has undertaken a review of the White House Travel Office. As a result of that review, the current employees of the White House Travel Office have been dismissed effective today." Talking points on changes in White House Travel Office 5/13/93, OIC Bates No. 542-DC-00007611.

⁴⁴³ Eller GJ 7/17/96 at 58-59.

⁴⁴⁴ Eller told Dwight Holton during Eller's White House Travel Office Management Review interview that he purposefully threw away all Travel Office documents on May 13 because "he removed himself from the issue." Holton 7/2/96 at 41-44. However, when Holton asked Eller to see if he still had any documents, Eller "said he didn't think he had any e-mail on the subject. He said he might have a draft of talking points on his hard drive and he would check and see." *Id.* at 43-44. Thus, if Eller removed himself from the issue on May 13, but told Holton that he might have a draft of talking points on his hard drive, then those talking points must have existed on or before May 13. No one else has indicated that they worked on any talking points on or before May 13. Eller's statement to Holton that he "removed himself" from the Travel Office issue on May 13 is inconsistent with his self-initiated meeting with Chief of Staff McLarty on May 14. *See, infra*, Subsection (D)(4)(b).

Eller examined the talking points and testified that, based on the document's style, he could have written them, and that he could have prepared and edited them on May 13. Eller GJ 7/17/96 at 58-59, 62 (Talking points on changes in White House Travel Office 5/13/93, OIC Bates No. 542-DC-00007611). Patsy Thomasson said David Watkins had discussed with her a set of "premature" talking points that Eller had drafted before the audit was done, which she recognized in the grand jury based on content and Eller's particular aggressive advocacy of firing. Thomasson GJ 7/24/96 at 89-90, 212-13 (discussing GJ 95-2 Exhs. 339 & 345) (there is

b. After the FBI Understood From Kennedy that the "Highest Levels" within the White House were Involved, The FBI Began an Investigation.

On the morning of Thursday, May 13, Bourke called Kennedy back and told him that the FBI needed a few more facts about whether government funds were involved, and Kennedy told him they were not.⁴⁴⁵ Kennedy reiterated the situation's urgency to Bourke.⁴⁴⁶ Bourke assured Kennedy that he was getting in touch with someone so Kennedy could "pick their brain."⁴⁴⁷ Kennedy said he was getting pressure from "up above," and he "needed a call back in the next 15 minutes, or he would go . . . to another agency, and he mentioned the IRS."⁴⁴⁸ Bourke went to Richard Wade, then Unit Chief of the Government Fraud Unit at headquarters,⁴⁴⁹ who referred Bourke to another unit chief at FBI headquarters named Howard B. Apple.⁴⁵⁰ Bourke then

no testimony from Patsy Thomasson or David Watkins showing that Watkins had shown her Eller's talking points).

⁴⁴⁵ Bourke GJ 6/4/96 at 10.

⁴⁴⁶ Kennedy GJ 7/30/96 at 40.

⁴⁴⁷ Bourke GJ 6/4/96 at 30-31.

⁴⁴⁸ *Id.* at 10-11. Bourke thought setting a 15 minutes deadline for a return call and referring to people "up above" reflected Kennedy's "thought in his own mind . . . that just because it's the White House, or he's an associate counsel at the White House . . . I'm supposed to jump, if they say jump. And it -- I mean, I've dealt with the White House for eight years. It don't happen that way, you know." *Id.* at 24-25. Bourke thought this was just Kennedy's "demeanor," that "maybe Mr. Kennedy thought that he was bigger than I thought he was, as far as position or ego." Bourke GJ 4/29/97 at 18-19.

⁴⁴⁹ Wade GJ 6/4/96 at 2-3.

⁴⁵⁰ Bourke GJ 6/4/96 at 8.

quickly conferred with Apple, and called Kennedy back to say Apple and Patrick J. Foran, also from FBI headquarters, would be calling Kennedy.⁴⁵¹

Apple called Kennedy who, according to Apple, "appeared nervous, and . . . mentioned even on the phone that he was being directed at the highest levels," which Apple understood as a reference to the President.⁴⁵² Kennedy admitted that he told the agents the matter was urgent and involved "high levels at the White House."⁴⁵³ However, he testified he was positive that he did not tell the FBI that he was acting at the direction of the White House's "highest" levels, because such a statement would not have been true.⁴⁵⁴

Apple said this "highest levels of the White House" comment caused him to "pass it up my own ladder" to FBI Deputy Assistant Director Daniel O. Coulson, who in turn passed the information to FBI Associate Deputy Director Douglas Gow, all before anyone from the FBI ever visited the White House.⁴⁵⁵ Kennedy asked Apple to come over right away as he did not want to discuss the matter over the phone.⁴⁵⁶ Although Apple and Foran felt that special agents

⁴⁵¹ Id. at 11-12; Kennedy GJ 7/30/96 at 43.

⁴⁵² Apple GJ 6/13/96 at 5.

⁴⁵³ Kennedy GJ 7/30/96 at 45.

⁴⁵⁴ Id. at 44-45, 56-57.

⁴⁵⁵ Apple GJ 4/29/97 at 14-17; Foran GJ 4/29/97 at 9-12. Coulson wrote a one page memo dated 5/13/93 to Asst. Dir. Crim. Div. Larry Potts, stating that Kennedy had phoned Bourke, who had placed Kennedy in touch with Apple, and that Kennedy had "'advised that he was being instructed by the highest level at the White House to contact the FBI regarding a theft matter that might possibly involve kickback.'" Foran GJ 4/29/97 at 12 (GJ 95-2 Exh. 477).

⁴⁵⁶ Apple GJ 6/13/96 at 4-5. Apple testified that he had the impression that Kennedy did not understand how the FBI worked. Id. at 5. Agent Foran also testified that Kennedy told Apple on the telephone that a request was coming from the highest levels in the White House. Foran GJ 6/4/96 at 9-10.

from a field office were the appropriate people to respond to Kennedy's request, Kennedy insisted that someone from FBI headquarters handle the matter.⁴⁵⁷

i. Kennedy Met With the FBI on the Morning of May 13.

Later during the morning of Thursday, May 13, Apple and Foran met with Kennedy at the White House. Kennedy began to describe the problem.⁴⁵⁸ Kennedy again said, "that he was being directed at the highest level of the White House, and this matter required immediate action."⁴⁵⁹ Apple testified that he and Foran probed Kennedy repeatedly to see if there had been a violation of federal law.⁴⁶⁰ Kennedy told them that if the FBI could not help him, then he would have to call the IRS.⁴⁶¹ Kennedy repeated there was suspicion of "bribes" and

⁴⁵⁷ Apple GJ 6/13/96 at 4; Foran GJ 6/4/96 at 9-13.

⁴⁵⁸ Apple testified that Kennedy "explained the mission of the Travel Office, how they made reservations, on trips, but he heard that there were rumors that some of the employees their lifestyles were not in line with . . . their salary [H]e said he heard rumors about . . . checks written to cash, and a lack of competitive bidding for travel services [H]e said he had no proof of theft" Apple GJ 6/13/96 at 8-9. Apple was concerned whether there was any violation of federal law. *Id.* at 9-10. Foran testified that Kennedy told them about Catherine Cornelius, "that she was appointed, and upon arrival in the office, she had subsequently reported back that she felt she was being shunned . . . and it was her opinion that she wasn't being accepted because some wrongdoing was going on within the office that they didn't want her to know about, see, observe, or participate in." Foran GJ 6/4/96 at 19.

⁴⁵⁹ Apple GJ 6/13/96 at 8. Kennedy did not indicate who he meant by "highest level." Apple GJ 4/29/97 at 22; Foran GJ 6/4/96 at 9. Foran explained, "His statements were that . . . he and the White House were quite concerned that some action had to be taken with regard to this before it was leaked or became public knowledge, and the administration might have to suffer the blame of something that may have gone on prior to their taking office." *Id.* at 23. Kennedy denied having used the phrase "highest levels" because it would not have been true. Kennedy GJ 7/30/96 at 44-45, 56-57. Kennedy admitted that he used the phrase "high levels" in his conversation with Agent Apple and Agent Foran. Kennedy GJ 7/30/96 at 45-46.

⁴⁶⁰ Apple GJ 6/13/96 at 9-10.

⁴⁶¹ Apple GJ 4/29/97 at 27.

"kickbacks," and also used the words "embezzlement" and "stealing" in discussing his concerns with the agents.⁴⁶²

Kennedy stated that he discussed with the agents the various alternative ways of proceeding, including doing nothing, suspending the employees and conducting an audit, or doing something in between. Apple and Foran both testified that Kennedy posed three slightly different choices -- one of which was firing the employees⁴⁶³ -- and asked what the agents thought he should do. Apple "felt that that was very improper, and . . . felt he was trying to use the FBI" to back-up his administrative decisions.⁴⁶⁴ He and Foran therefore told Kennedy that it was not a decision for the FBI to make.⁴⁶⁵ Foran also explained that the FBI's role was to determine if there was predication to open an investigation, and that there did not appear to be sufficiently strong information to initiate an investigation.⁴⁶⁶ The agents told Kennedy they would identify the proper white collar investigators to handle the issue and left.⁴⁶⁷ Kennedy testified that he told them to make sure they were obtaining the necessary internal approvals to continue talking with him.⁴⁶⁸ Apple and Foran discussed the meeting with Wade, who

⁴⁶² Foran GJ 6/4/96 at 21, 25-27.

⁴⁶³ Apple stated that Kennedy saw his other choices as firing half the employees and having the other half do an audit, or just conducting an independent audit. Apple GJ 6/13/96 at 15; see also Foran GJ 6/4/96 at 30-31.

⁴⁶⁴ Apple GJ 6/13/96 at 15.

⁴⁶⁵ Id.; Foran GJ 6/4/96 at 31.

⁴⁶⁶ Foran GJ 6/4/96 at 31, 33.

⁴⁶⁷ See Apple GJ 6/13/96 at 11-12.

⁴⁶⁸ Kennedy GJ 7/30/96 at 48-49.

determined that if the allegations of theft involved government funds, then his fraud unit may have jurisdiction.⁴⁶⁹

ii. During the Afternoon of May 13, Kennedy and Foster Met With the FBI Who Interviewed Cornelius.

Later, in the afternoon of May 13, 1993, FBI Special Agents Richard Wade and Tom Carl met with Kennedy in his office at the White House.⁴⁷⁰ Kennedy indicated he was "miffed" at having to discuss the matter again with another set of agents, but nevertheless he began outlining the situation.⁴⁷¹ Ten to fifteen minutes into the meeting, Foster appeared in Kennedy's office and participated.⁴⁷²

Wade and Carl testified that in this meeting Kennedy indicated that the matter had interest at the White House's "highest levels."⁴⁷³ Carl and Wade agree that Kennedy never

⁴⁶⁹ Foran GJ 6/4/96 at 42-43; Wade GJ 6/4/96 at 4-5.

⁴⁷⁰ Carl GJ 6/4/96 at 7-8; Wade GJ 4/29/97 at 10-13; Kennedy GJ 7/30/96 at 54-57.

⁴⁷¹ Carl GJ 6/4/96 at 8.

⁴⁷² Kennedy GJ 7/30/96 at 55-56. Wade testified that Foster contributed to the conversation "[v]ery minimally." Wade GJ 6/4/96 at 13. Foster's notes on this meeting read as follows:

230-300 Join WK mtg w/ 2 agents [Rick Wade and Tom Carl] in process re how to investigate; discuss concern re not screwing up any subsequent invn; document integrity; FBI mention possibility of undercover . . .

I expressed view that office staff likely already suspect; they request to interview CC; call DW to request she come to WK office; introduce; WK goes to hill [6/1 5 min late] & I return to office while they interview

OIC Bates No. 542-DC-00000914.

⁴⁷³ Carl GJ 6/4/96 at 8; Wade GJ 6/4/96 at 14. Wade later said he recalled Kennedy saying either "high levels" or "highest levels." Wade GJ 4/29/97 at 24-25. Carl said he assumes Kennedy's comment referred to the President, but Kennedy did not "say anything other than

indicated who he might have meant, whether the phrase Kennedy used was "high level" or "highest levels."⁴⁷⁴ Kennedy, again, said that he might have said he was being directed at a "high level," but firmly denied using the phrase "highest levels" in his conversation with Wade and Carl.⁴⁷⁵

According to Kennedy, at some point in the conversation, the agents asked if they could interview Cornelius.⁴⁷⁶ Carl testified, on the other hand, that Kennedy made the suggestion to interview Cornelius.⁴⁷⁷ According to Carl, during the meeting Kennedy was reading information from a memorandum; when Carl informed Kennedy that more specific facts were needed before the agents could make an informed judgment about whether the FBI had jurisdiction over the matter and how to proceed, Kennedy offered to have the agents speak with the employee who prepared the memorandum, Catherine Cornelius.⁴⁷⁸ Wade also stated that Kennedy suggested the agents speak with Cornelius.⁴⁷⁹

In any event, Kennedy called Cornelius, who came to his office, and he then left for an appointment on Capitol Hill.⁴⁸⁰ Cornelius told Carl that she had received a call from Martens,

'highest levels.'" Carl GJ 6/4/96 at 9.

⁴⁷⁴ Carl GJ 4/29/97 at 18-19; Wade GJ 6/4/96 at 14.

⁴⁷⁵ Kennedy GJ 7/30/96 at 56-57. See generally Kennedy's notes of meeting 5/13/93, OIC Bates No. 542-DC-00001475.

⁴⁷⁶ Kennedy GJ 7/30/96 at 54-56.

⁴⁷⁷ Carl GJ 6/4/96 at 12-13.

⁴⁷⁸ Id. at 12-13.

⁴⁷⁹ Wade GJ 6/4/96 at 16.

⁴⁸⁰ Kennedy GJ 7/30/96 at 58.

who told her that Dale had said that Travel Office "business wasn't available; that he [Martens] could not either offer cheap enough or expert enough service for him to get that," and that Martens had told her of another businessman who Dale had solicited a bribe from to get Travel Office business.⁴⁸¹ Cornelius testified that during the interview she also showed the agents the checks made out to cash and other records she had taken from the Travel Office.⁴⁸² Carl and Wade found Cornelius credible, in part because she had some documentation.⁴⁸³

iii. Foster Decided to Proceed With an Audit Before the FBI Criminal Investigation, for Which the FBI Found "Predication."

Near the end of her interview with Wade and Carl, Cornelius received a page instructing her to go to Watkins's office; Foster accompanied her when she left.⁴⁸⁴ Cornelius testified that, in addition to Watkins, she and Foster found Patsy Thomasson and Peter Segal, also of Watkins's

⁴⁸¹ Carl GJ 6/4/96 at 21.

⁴⁸² Cornelius GJ 7/25/96 at 128-131; Carl GJ 6/4/96 at 20.

⁴⁸³ Carl GJ 6/4/96 at 30; Wade 6/4/96 at 52. Wade testified that even though Cornelius's self-interested motivations would have been relevant to them, he did not believe it "would have changed the outcome" of their determination to open an investigation, because "when we initiate an investigation we are far from proving the facts alleged. All we are doing is we have certain information that, if it's proved to be true, is a violation." Wade GJ 6/4/96 at 52. Wade furthermore said that none of the personal agendas of Cornelius, Thomason, Martens or TRM would have changed his decision to open an investigation as a result of the things Cornelius had already told and showed them. Id. at 42-44, 50-52.

⁴⁸⁴ Cornelius GJ 7/25/96 at 132. Cornelius testified that Kennedy and Foster were there at the end of the meeting. Id. Kennedy stated, however, that he left before the FBI interview began and returned to find everyone gone. Kennedy GJ 7/30/96 at 58-60.

staff, in Watkins's office.⁴⁸⁵ Foster stated that he planned to speak with the FBI at 6:00 p.m. and would report back to the group.⁴⁸⁶

When Kennedy returned to the White House between 6:00 p.m. and 7:00 p.m., he learned that Wade and Carl had left a message for Foster.⁴⁸⁷ In addition, Foster told him that Watkins had reported that the White House now had audit capability.⁴⁸⁸ Kennedy and Foster returned the call from Carl.⁴⁸⁹

Carl and Wade told Kennedy and Foster that they had interviewed Cornelius and thought there was predication to conduct an investigation.⁴⁹⁰ Wade testified that they drew this conclusion because Cornelius had provided more facts and documentation for her claims and because she had made allegations of kickbacks or bribery.⁴⁹¹ Carl also testified that they told Kennedy that they felt there was predication for a criminal investigation based on Cornelius's statements which, according to Carl's earlier testimony, included the allegation that Dale had

⁴⁸⁵ Cornelius GJ 7/25/96 at 132-33.

⁴⁸⁶ Id. at 133.

⁴⁸⁷ Kennedy GJ 7/30/96 at 60.

⁴⁸⁸ Id. at 63.

⁴⁸⁹ Id. at 60.

⁴⁹⁰ Id. at 61.

⁴⁹¹ Wade GJ 6/4/96 at 30-31. Wade contacted Jerome Campana, a supervisor at the FBI's Washington field office, who relayed the information gleaned from Wade to David Bowie, another field office supervisor. Bowie GJ 6/6/96 at 3. Bowie had a number of follow-up conversations with both Wade and Carl regarding the allegations against the Travel Office employees. Id. at 8. Bowie testified that in his opinion the information relayed by FBI Headquarters (basically recounting the Cornelius interview) provided sufficient predication to initiate an investigation. Id. at 14.

solicited bribes.⁴⁹² Referring to his notes, Kennedy testified that Foster was concerned with what he called a "'gangbuster problem'," that is, he "did not want the FBI to go in there with guns blazing . . . [as a]t this point in time, we believed the evidence to still be sketchy and weak."⁴⁹³ Accordingly, by Kennedy's account, though the agents wanted to commence an investigation, Foster and Kennedy decided instead to bring in a team of outside auditors and agreed to contact the FBI if the auditors found evidence of wrongdoing or, in any event, to share the audit's results.⁴⁹⁴ Carl testified that Foster and Kennedy were surprised that the agents found sufficient predication for an investigation and that, at that point, Carl suggested to Foster that an audit be conducted.⁴⁹⁵ Foster later advised Wade that the FBI could not participate in the audit.⁴⁹⁶

The FBI's view was that "it might actually be to our benefit to let them conduct the audit because the individuals in the Travel Office would feel more free to talk to the auditors and would probably make statements to the auditors that they would not make to FBI agents."⁴⁹⁷ Carl had recommended that the FBI agents should participate to preserve chain of custody in case of criminal prosecution, but Foster overruled him because he had wanted "to interview these people

⁴⁹² Carl GJ 6/4/96 at 21, 39.

⁴⁹³ Kennedy GJ 7/30/96 at 62-63; see also Kennedy's notes of phone call 5/13/93, OIC Bates No. 542-DC-00001476.

⁴⁹⁴ Kennedy GJ 7/30/96 at 67-68.

⁴⁹⁵ Carl GJ 6/4/96 at 25-28.

⁴⁹⁶ Id. at 28-29.

⁴⁹⁷ Wade GJ 6/4/96 at 36.

without them being alerted to the fact that we were conducting, you know, a full-blown criminal investigation."⁴⁹⁸

At the end of the day, Wade and Carl discussed their belief that there was predication for an investigation with FBI Deputy Assistant Director of the Criminal Division Fred Verinder, who agreed with them based on "indicators of a kickback of checks for cash and questionable, I guess, living standards."⁴⁹⁹ Verinder notified the Department of Justice because he deemed the case "sensitive," and was advised by the Criminal Division and Public Integrity Sections at DOJ "that there was predication."⁵⁰⁰

c. McLarty and Foster Discussed the Travel Office With the First Lady and Discussed the First Lady's Concerns With Other Senior Staff.

Also on May 13, both Mack McLarty and Vince Foster separately spoke with Mrs. Clinton concerning the Travel Office. After briefing Mrs. Clinton, McLarty, Foster, Watkins, and Patsy Thomasson discussed Mrs. Clinton's concerns and decided to hire Peat Marwick to conduct an audit of the Travel Office.

i. Chief of Staff McLarty Briefed Mrs. Clinton.

McLarty testified that he met with Mrs. Clinton, at her request, in his office on the afternoon of May 13, 1993,⁵⁰¹ which he described as follows:

⁴⁹⁸ Carl GJ 6/4/96 at 29. Foster had expressed concern about the FBI going in with "guns blazing." Wade GJ 6/4/96 at 36-37. Kennedy said that he and Foster were pleased they had "carried the day" on this issue. Kennedy GJ 7/30/96 at 67.

⁴⁹⁹ Verinder GJ 6/4/96 at 3-4; Apple GJ 4/29/97 at 23.

⁵⁰⁰ Verinder GJ 6/4/96 at 5-6.

⁵⁰¹ McLarty GJ 7/31/96 at 24. McLarty said that either Mrs. Clinton or someone on her staff called to request the meeting. Id. This testimony contradicted McLarty's March 21, 1994 statement to the GAO in which he said that the First Lady had "stopped by [his] office to say that she had heard about inefficiencies in the Travel Office and asked him to look into it." McLarty

Mrs. Clinton came in and she did raise concerns about the Travel Office. She asked, "Are you aware that there are potentially very serious problems in the Travel Office?" These are my words, not hers, but I think it captures the essence of what she said.

And I responded to her that I was aware. And she said, "Oh, well, good. Then if you're aware of it, that you're -- I know you're looking into it," or I perhaps said, "We're already looking into that."

And that was about the extent of the exchange.⁵⁰²

McLarty described his conversation with Mrs. Clinton as "a factual, businesslike exchange."⁵⁰³ McLarty explained that "Mrs. Clinton was concerned about this matter, felt there was a distinct possibility of mismanagement and possible misconduct, wanted this matter to be taken seriously" ⁵⁰⁴

GAO Int. 3/21/94, OIC Bates No. AJ-DC-00000888 at 893 (transcribed by GAO Investigator Bob Homan 3/23/94). When asked why McLarty had not informed the GAO that the meeting with Mrs. Clinton had been previously scheduled at Mrs. Clinton's request, McLarty responded to this apparent inconsistency as follows:

I responded completely to the GAO. I mean, I -- it was previously scheduled, only in the sense . . . that she had called -- her office had called that morning. It was not like it had been on my schedule for a week.

McLarty GJ 7/31/96 at 26.

⁵⁰² McLarty GJ 7/31/96 at 27. McLarty said he could not recall whether the exact conversation involved her asking, "'are you aware of the concerns,'" with him responding, "'Yes, I am, and we're looking into it,'" or whether she said, "'There are serious concerns in the Travel Office,'" and he responded, "'Yes, I'm aware of it.'" Id. at 179. McLarty acknowledged, however, that as of May 13, he had not done anything about the Travel Office situation. Id. at 29. Consequently, he amended his testimony and stated that he informed Mrs. Clinton that he was "going to look into [the Travel Office] matter." Id. at 31 (emphasis supplied).

⁵⁰³ Id. at 40.

⁵⁰⁴ Id. at 50.

McLarty also testified that he "did feel an obligation to keep her [Mrs. Clinton] apprised of [Travel Office] matters and did so."⁵⁰⁵ He said that "the fact that the First Lady, one of the principals, had raised this issue, that adds an element of priority to any matter, and it did to this one."⁵⁰⁶ When asked whether her interest was an element in the decision making process, McLarty responded, "It was an element -- anytime a principal raises an issue, it is an element."⁵⁰⁷ McLarty explained that the reaction to Mrs. Clinton's comments at the May 13 meeting between himself, Foster, and Watkins -- described more fully below -- was "that yet it's one more thing we have to deal with. We have no choice but to deal with it now. So let's get about dealing with it."⁵⁰⁸ McLarty also testified that he believed Mrs. Clinton would have accepted doing nothing about the Travel Office employees had the White House's financial review of the office, conducted by Peat Marwick on May 14 --17, ⁵⁰⁹ not found mismanagement.⁵¹⁰

⁵⁰⁵ Id. at 63.

⁵⁰⁶ Id. at 140.

⁵⁰⁷ Id.

⁵⁰⁸ Id. at 158-59.

⁵⁰⁹ See, infra, Subsection (D)(4)(a).

⁵¹⁰ McLarty GJ 7/31/96 at 182-183. In his House testimony, given nineteen days before his grand jury testimony, McLarty testified "[S]he . . . raised the issue with me that she had heard there might be serious problems, deep concerns, in the Travel Office, both about management and conduct. I responded that I was aware of those possibilities, and with that she said, well, good, you are aware of it. I think this is a serious matter, we should look into it. I told her that I agreed with her, and we were doing so, or I planned to do so." McLarty House Depo. 7/12/96 at 33.

David Gergen, a former White House official in Republican administrations, was brought in by McLarty and the President on May 27 in part to respond to the public outcry over the Travel Office firings.⁵¹¹ He related McLarty's account of his discussion with the First Lady:

What he told me was that she was very upset about the operations of the Travel Office. That she had been ginned up on that issue . . . [a]nd that there were at least two occasions when she made it clear to him that she wanted action taken. That she wanted it cleared up and him to act on it.

I have a memory of him telling me that, at one time, she came into his office in a fairly agitated state and made it very clear that she was hearing things about the Travel Office that simply had to be addressed . . . I do not recall him telling me that she asked or demanded that people be fired.⁵¹²

Gergen emphasized, though, that "[m]y recollection was that she wanted action and that she had been -- she was one of -- she was a catalyst in the White House taking a look at the situation. I did not understand from that he [sic] interpreted that as an implicit -- certainly not an explicit, but even implicit order that they be fired."⁵¹³

⁵¹¹ Gergen GJ 7/1/96 at 4-6.

⁵¹² Gergen GJ 7/1/96 at 11-12. Gergen also testified that McLarty told him that Mrs. Clinton was "pressing for action." Id. When asked about Gergen's testimony, McLarty stated that he may have told Gergen about his conversation with Mrs. Clinton, and he "could have" described Mrs. Clinton as being agitated. McLarty GJ 7/31/96 at 48-50. McLarty also testified:

Mrs. Clinton was concerned about this matter, felt there was a distinct possibility of mismanagement and possible misconduct, wanted this matter to be taken seriously, and in that vein she was upset or concerned about it, I guess agitated. I don't remember using that phrase.

Id. at 50. After further questioning on this point, McLarty said that he would not use "agitated" to describe Mrs. Clinton at the May 13 meeting, but that "very concerned" would be an "accurate and a correct description." Id. at 52.

⁵¹³ Gergen GJ 7/1/96 at 16.

ii. Vince Foster Met Twice With Mrs. Clinton.

Vince Foster's⁵¹⁴ notes reflect that subsequent to the Travel Office firings, he tried to reconstruct his contacts with Mrs. Clinton about the Travel Office matter.⁵¹⁵ Foster's notes contain the following description of his meeting with Mrs. Clinton (and his subsequent meeting with McLarty and Watkins):

2 conversations w/ HRC on Thurs 1st after late lunch go to see her re med malpractice issue - could be on viability of enterprise liability (was conducting analysis of proposed reforms)

Q - how tvl office came up? Eg, do you know anything re any problems in tvl office or I've heard something about problems in tvl office told her had some (soft?) info, assigned to WK Q - anyone else present don't recall when SS in hall & door open I go in sometimes other persons present, sometimes not

2d conv also re malpractice study (possibly re alternative study) on enterprise liability - do both ways w/ and w/o mentioned auditor plan Q - personal vs telephone? Q - When? Where? Who called whom?⁵¹⁶

In discussion w/ MM, PT & DW on Thurs afternoon . . . could have discussed gen'l observation that HRC generally appeared less tha[n] satisfied with timeliness of decision making, i.e. cloture[.] Never discussed w/ anyone anytime prospect HT would directly or indirectly benefit, never a possibility in my mind given his disclaime[r] Wed afternoon.⁵¹⁷

⁵¹⁴ The White House Travel Office Management Review reported that on May 13 during a meeting with Foster on an unrelated matter, "the First Lady told Foster that she had heard about problems in the Travel Office. Foster replied that Kennedy was looking into it." GJ 95-2 Exh. 68 at 9. Foster's calendar reflects that he had two meetings with Mrs. Clinton on May 13, at 2:00 PM and 8:00 PM. OIC Bates No. 338-DC-00000059.

⁵¹⁵ Foster's notes undated, OIC Bates No. 542-DC-00000984 ("Attempt to reconstruct conversations with HRC").

⁵¹⁶ Foster's notes undated, OIC Bates No. 542-DC-00001016-17 (emphasis in original).

⁵¹⁷ Foster's notes undated, OIC Bates No. 542-DC-00001018.

defend mgment decision hereby defend HRC role whatever it was in fact or might have been misperceived to be . . . Offense strategy Hill GAO Avoid forcing DOJ⁵¹⁸

. . . .

6/30 3 Podesta mtg in my office: Watkins says he never talked to HRC before Friday evening, had received prior info about her interest from me. MM_c is vague in memory when he talked to her but (DW or MM_c?) believes she first mentioned it to MM shortly before the mtg w/ MM, DW & VF on Thurs afternoon. I told John that after a late lunch on Thurs I spoke w/ HRC - was primarily working on medical malpractice project at time and could have been in discussion re same. She was aware of some assertions of impropriety in tvl office and wanted to know what was being done about it. - I related I had given to Kennedy as our security officer.

I related I had a later discussion on Thurs (evening?) also may have included health care in which I advised her outside auditors were being used and probably told her that would start Friday. I told him I may have had a few short, incidental non-substantive discussions subsequently to pass on my understanding from DW of status, which changed.

After discussing other issues we mutually exchanged views that HRC is perceived as being involved in decision and events in which she has no participation.

Subsequently talked to BWN, asked if he had taken a position in interviews whether he was aware of FBI contact before terminations. He said he had not been asked (Podesta told me same). I reminded him of Fri . . . discussion re use of outside auditors and holding off FBI. He said he had some recollection and if I remembered he was sure it was true. That he didn't believe he had been told in advance of contact (I agreed) but if we had come to him he's not sure but that he would have approved contacting them, "not sure I would have caught it."⁵¹⁹

Foster also related these contacts to John Podesta when Foster was interviewed for the White House Travel Office Management Review, which note taker Todd Stern transcribed as follows:

Thursday afternoon, two meetings HRC says to Vince Foster, what's the deal . . . with the Travel Office thing. Vince Foster says, there's problems.

⁵¹⁸ Foster's notes undated, OIC Bates No. 542-DC-00001060.

⁵¹⁹ Foster's notes 6/30/93, OIC Bates No. 542-DC-00001066-67.

Kennedy is figuring it out. Then afternoon meeting, David Watkins and Vince Foster . . . see Mack McLarty regarding Peat Marwick. Mack has seen HRC, according to David Watkins . . . Mack approves Peat Marwick . . . Vince Foster tells HRC . . . Thursday night . . . about Peat . . . Marwick.

Vince Foster not update her Friday. Eller is in Vince Foster's face. Friday, Vince Foster says to . . . DW . . . If you want him fired, you talk to Eller . . . David Watkins talks to Eller long distance. Vince Foster disengaging, other than tracking FBI. May have updated . . . First Lady.⁵²⁰

iii. McLarty, Watkins, Thomasson, and Foster Discussed Mrs. Clinton's Concerns.

Late Thursday afternoon, Foster,⁵²¹ Watkins, McLarty, and Patsy Thomasson attended a meeting in McLarty's office.⁵²² Watkins, Foster, and Thomasson advised McLarty of their

⁵²⁰ See GJ 95-2 Exh. 162. Stern questioned his own handwriting on the word "Thursday," said he was unsure about the "W" in DW, and said it "maybe" read First Lady at the end, but he was unsure. Stern GJ 7/10/96 at 236-37.

⁵²¹ Foster's notes of the meeting state:

Watkins advises re availability of outside auditors and perf rev

[DW, VF] discussion w/ Mack - friends, slow down, have cause before decide . . .

[team] agents available, interview Ees (admin lv?)

"gangbusters" - not there yet - low key interviews - custody of documents

-

-- hearsay

CC credible?

FBI higher profile

if clean, looks bad not business as usual

outside auditors "cover" for getting info chosen to ordinary course of business

decision to employ Peat Marwick to conduct an audit.⁵²³ McLarty approved this plan.⁵²⁴

McLarty recalled that Mrs. Clinton's concern was discussed openly at this particular meeting.⁵²⁵

McLarty testified that in subsequent meetings about the Travel Office, it was clear to him that

Foster and Watkins were aware "that the First Lady was concerned" about the Travel Office

cover for financial audit . . .

if get evidence, can adjust [RV] or bring in satisfactory explanation could exist

credible, bright, not puff, might be plausible explanation

→ puzzled re even & amt

absence of routine documentation

Q - fed crime

OIC Bates No. 542-DC-00000914-15. Later, Foster's notes reflect a "discussion w/ HT re strength of kickback allegation -- source prob not want to go public . . ." OIC Bates No. 542-DC-00000916. Thomason denied making this statement to Foster. Thomason GJ 7/17/96 at 107.

⁵²² McLarty GJ 7/31/96 at 56-57; Thomasson GJ 7/24/96 at 31.

⁵²³ Thomasson GJ 7/24/96 at 31; McLarty GJ 7/31/96 at 56-57. Peat Marwick was selected by "Jennifer O'Connor, who worked for David [Watkins] and [Patsy Thomasson] [as] our representative on the National Performance Review, . . . had met Larry Herman, and she suggested Peat Marwick because Larry Herman had a working knowledge of how we were doing the National Performance Review." Thomasson GJ 7/24/96 at 34.

⁵²⁴ McLarty House Depo. 7/12/96 at 31.

⁵²⁵ McLarty GJ 7/31/96 at 58-60. Foster's notes relating to this meeting reflected that:

In discussion w/ MM, PT & DW on Thurs afternoon . . . could have discussed gen'l observation that HRC generally appeared less tha[n] satisfied with timeliness of decision- making, ie cloture

OIC Bates No. 210-DC-00000113.

matter.⁵²⁶ McLarty also testified that he "probably was aware" that Foster was communicating with Mrs. Clinton during the week of May 13.⁵²⁷ David Watkins's notes, dated May 31, 1993, recounting the meeting also discussed Mrs. Clinton's interest:

Watkins/Foster/Thomasson met with McLarty 4:00 p.m. [and] Advised him of situation. McLarty said he was well aware - had spoken with 1st Lady an 1 hr. before⁵²⁸

Patsy Thomasson recalled that Foster referred to his "clients" during that meeting, a phrase Thomasson knew Foster routinely used to refer to the President and First Lady.⁵²⁹ He said the Travel Office "was something that we needed to take action on, the clients wanted us to follow-up."⁵³⁰

⁵²⁶ McLarty GJ 7/31/96 at 58. McLarty testified:

I think there was a sense that we would need to address this in a very timely and serious way and deal with it, not only because Mrs. Clinton was concerned about it, but that was one of the reasons.

McLarty GJ 7/31/96 at 157.

⁵²⁷ Id. at 63.

⁵²⁸ GJ 95-2 Exh. 164 (emphasis in original). Watkins agreed that Mrs. Clinton's concerns were openly discussed at this meeting. Watkins Int. 11/22/96 at 21.

⁵²⁹ Thomasson GJ 7/24/96 at 32.

⁵³⁰ Id. at 31-32. Watkins's notes reflected the following:

May 12 & 13 Periodic reports from Vince Foster that First Lady had inquired about Travel Office & why wasn't action being taken - report was that they should be fired immediately & out of here by the end of the day.

GJ 95-2 Exh. 164. Patsy Thomasson testified that Watkins never mentioned to her the comments Foster had made prior to the meeting regarding Mrs. Clinton. Thomasson GJ 7/24/96 at 82 - 83.

Months later, when Watkins was preparing the Watkins Memorandum,⁵³¹ Matt Moore claims that Watkins told Moore that, according to Harry Thomason, on Thursday, May 13, after a Health Care Task Force meeting, Mrs. Clinton "was on the warpath" because "our people weren't there to serve the Pres[ident]," twice emphasizing the phrase "our people."⁵³²

David Gergen said that when he arrived at the White House:

[T]here was a high degree of suspicion about a lot of the permanent employees of the White House.

And so that there were rarely given -- there was a sense that they -- and I saw this back in the Nixon administration when the Nixon administration first came in after eight years of Democrat Presidents. There was a very high degree of suspicion about the permanent employees. I wasn't working there at the time, but I came in two years later and heard a great deal about this. How there was a suspicion that the ushers and the telephone operators and everybody else may have been Democratic holdovers. This was seen as a Democrat town, quote.

And when the Clintons came in after 12 years of Republican Presidents, I thought there was a high degree -- in fact, I thought an inordinate amount of suspicion about the employees who were there then, because I've known a lot of these

⁵³¹ Moore GJ 6/27/96 at 4-6.

⁵³² Id. at 39-40, 42; Mrs. Clinton's phraseology regarding putting "our people" in the Travel Office was also attributed to her by Watkins the following day. See, supra, Section IV(A). Moore GJ 6/27/96 at 39, 43 (testifying that Watkins told Moore that Mrs. Clinton's views regarding the Travel Office were "passed to him from Harry Thomas[on]").

Stern said that during their interview of Mrs. Clinton for the White House Travel Office Management Review, she made no mention of having made such a statement to Watkins. Stern GJ 7/10/96 at 145. Stern said the First Lady did acknowledge speaking with Watkins about the Travel Office, but Stern said "all that I recollect is that he gave her an update on the progress of the Peat Marwick review. . . . she told us that she talked briefly to Watkins and that he gave her an update on the Peat Marwick review." Id. at 145-46.

The only other possible source for this attribution to Mrs. Clinton is Harry Thomason, but Thomason denied attributing any statement to Mrs. Clinton like "why these people aren't gone" or "she is ready to fire them all that day" or they should be gone "by the end of the day." Thomason GJ 7/17/96 at 133-34, 142. In his House testimony, Thomason explained he would not have said she said such things because he "didn't believe that she had the authority to fire them." Thomason House Depo. 5/17/96 at 172.

people, the operators and so forth. And so I had the sense that people were jumpy, because there was a -- people were -- there was a general state of agitation about the permanent employees or the holdover employees.

And there was -- and so the people tended to act before they necessarily had had calm hearings or discussions. And it was in that -- I was viewing this travel business in that context, in which I knew the Clintons were very concerned about it, because they had been told all of these lurid tales. You know, are these people holdovers? Are they passing information to the Republicans? That sort of thing.⁵³³

d. Watkins Retained Auditors and His Staff Prepared For the Travel Office Review.

On the evening of Thursday, May 13 at around 6:30 p.m., Watkins called Larry Herman of Peat Marwick to retain him.⁵³⁴ After the conversation with Herman ended, another meeting started involving Watkins, Patsy Thomasson, Foster, and Watkins's Deputy Jennifer O'Connor.⁵³⁵ Watkins "explained to Mr. Foster that there was going to be a review of the Travel Office . . . in order to see if there were -- i[f] there was anything amiss in their financial accounting and systems. And Mr. Foster thought that it was a good plan I think he indicated he wanted to check with some other set of individuals to see if this met everybody's sort of idea of what was a good plan."⁵³⁶ Foster did not indicate who he meant, other than to say "upstairs."⁵³⁷ Watkins also

⁵³³ Gergen GJ 7/1/96 at 27-28.

⁵³⁴ Herman GJ 6/20/96 at 5, 11.

⁵³⁵ O'Connor GJ 6/20/96 at 3-4, 22-23.

⁵³⁶ Id. at 23-24.

⁵³⁷ O'Connor GJ 6/20/96 at 24. O'Connor reports Foster as saying "that the people upstairs -- whoever they were -- wanted to move quickly." Id. at 30-31. O'Connor interpreted the comment to refer to people like Nussbaum, the First Lady, McLarty, who were literally located upstairs from Watkins, as opposed to referring to "chain of command" above Watkins. Id. at 26. O'Connor said, "it was clear that Mr. Watkins knew who [Foster] was talking about, and I assumed he was using this code -- whatever it was for -- so that I wouldn't know who he was talking about." Id. at 31.

said "that he thought it was a bad idea to fire the Travel Office staff and to replace the older employees with Catherine Cornelius . . . that he would look like a fool if he replaced the older employees with Ms. Cornelius."⁵³⁸

Sometime after 7:00 p.m., Patsy Thomasson held a meeting in her office with O'Connor, Paul Toback, Peter Segal, Matt Moore -- all members of Watkins's staff -- and possibly other members of Watkins's staff.⁵³⁹ At the meeting, Thomasson explained that everyone needed to be in early the next morning to help with a review of the Travel Office and indicated that there was some sort of problem in that office.⁵⁴⁰ Cornelius testified that Thomasson told her about the audit by phone.⁵⁴¹

That night, Segal, Moore, and O'Connor joined Cerda and Cornelius at their home to socialize and discuss the next day's events.⁵⁴² O'Connor testified that Cornelius was very nervous and afraid of the hostile Travel Office employees because of the audit.⁵⁴³ She also testified that

⁵³⁸ O'Connor GJ 6/20/96 at 28. O'Connor said that Watkins seemed to feel pressure to fire the Travel Office employees. O'Connor GJ 6/20/96 at 32. She based this conclusion on Watkins's indication that "he clearly didn't think that he had enough evidence to fire the folks in the Travel Office" Id. at 33. She later stated that Watkins "wanted to slow down the process," that he perceived was in motion, of having to fire the people in the Travel Office. Id. at 48.

⁵³⁹ O'Connor GJ 6/20/96 at 34. Watkins left town around 6:00 p.m., Thursday, the afternoon of May 13, 1993. Thomasson GJ 7/24/96 at 50.

⁵⁴⁰ O'Connor GJ 6/20/96 at 35.

⁵⁴¹ Cornelius GJ 7/25/96 at 134.

⁵⁴² O'Connor GJ 6/20/96 at 36; Cerda GJ 7/1/96 at 129.

⁵⁴³ O'Connor GJ 6/20/96 at 36. Cornelius explained, "I thought they were suspicious of me and I was suspicious of them. I mean, it was a tense situation. I was afraid to go in there. It's like a hostile environment. Nobody wants to go every morning at 9:30 and sit in a hostile room all day and feel like you're being watched." Cornelius GJ 7/25/96 at 88.

Cornelius said she knew there was pressure on Watkins to fire the employees, and that she, O'Connor, believed that as of the evening of May 13, Watkins was being pressured to fire the Travel Office staff by "the people upstairs."⁵⁴⁴ O'Connor, however, said, "it's all very fuzzy," and that Watkins never expressly told her "he was being pressured."⁵⁴⁵ O'Connor further recalled that Cornelius said Thomason had spoken with the First Lady about it, and the First Lady was very concerned.⁵⁴⁶

e. Summary of Allegations Made Relating to the Conduct of the Travel Office.

Given the large number and varied types of allegations of wrongdoing by the Travel Office, and the varied manner in which those allegations were conveyed to the FBI, we conclude this section of the Report with a summary section detailing the various allegations and the evidence supporting them at the time that the FBI and Peat Marwick began their formal investigations.

The allegations of wrongdoing by Travel Office employees that was communicated to the FBI before Peat Marwick began its review included the following: that it was "doing business with only one company and not being willing to let other people bid"⁵⁴⁷; "that Billy Dale and others in the White House Travel Office were living beyond their means" "Billy Dale had a

⁵⁴⁴ O'Connor GJ 6/20/96 at 32.

⁵⁴⁵ Id. at 34-35, 37, 56.

⁵⁴⁶ Id. at 37-38.

⁵⁴⁷ Thomasson GJ 7/24/96 at 16-17 (Thomasson said she heard this from Cornelius, Harry Thomason, and David Watkins); see also Thomasson GJ 7/11/95 at 13-15 (citing Harry Thomason as the source); Post-Ross (a friend of Harry Thomason) GJ 7/1/96 at 8-9 (citing Harry Thomason as the source). Cornelius communicated this allegation to the FBI. Carl GJ 6/4/96 at 21.

vacation home" and "that somebody there had owned and raced horses;"⁵⁴⁸ that "kickbacks [were] being taken by employees of the Travel Office;"⁵⁴⁹ "that there were checks made to cash and things like that -- sort of suggesting financial irregularities;"⁵⁵⁰ that "the staff of the Travel

⁵⁴⁸ Thomasson GJ 7/24/96 at 17; Wade GJ 6/4/96 at 12 (this was repeated to the FBI by Kennedy); Watkins GJ 2/28/95 at 46 (Cornelius told Watkins "that one of them owns race horses" within the first two weeks after Watkins had moved her to the Travel Office); Cornelius GJ 7/25/96 at 175-76 (Cornelius said that when Watkins asked her why she thought the Travel Office employees were living beyond their means, she told him "that Billy Dale has a lake home, that Gary Wright has a lake home, outside of his normal residence with his family, that John McSweeney has a horse. I think he had two horses and it was a colt. And John McSweeney had shown me the picture of the colt that he was trying to race in New Jersey, and that Barney had a boat"); Voles GJ 6/20/96 at 15-16 (Eller told the White House press staff sometime the week of May 10 "that the men who operated the Travel Office had -- were not being square with all the money; that there may -- that maybe they had racehorses, or a home in Switzerland, or -- you know, kind of said that they had, you know, expensive things that a government employee, a federal employee wouldn't really necessarily be able to afford on their salary").

⁵⁴⁹ O'Connor GJ 6/20/96 at 12 (O'Connor said Watkins told her this at lunch early in the week of May 13); Martens 7/16/96 at 89 (Martens said he told Thomason sometime in March or April that "Miami Air had indicated to Air Advantage that one of the reasons that they were not able to participate with the White House or provide flights to the White House is that they were unwilling to make arrangements regarding the payments"); Holton GJ 7/2/96 at 24 (Holton said that Cornelius told them during her White House Travel Office Management Review that by the time Harry Thomason mentioned the kickback allegation to her, "she understood it to be an allegation of a five percent kickback"); Post-Ross GJ 7/1/96 at 11-12; Watkins GJ 2/28/95 at 37-38 (Harry Thomason told him in late March or early April that there "were kickbacks going on in the White House Travel Office" and "some of the guys in the Travel Office were getting paid off by charter companies"); Cornelius GJ 7/25/96 at 101-02 (Cornelius said that Thomason mentioned that there had been a solicitation of a kickback from Miami Air at the 2 p.m. meeting on May 12 in Foster's office).

⁵⁵⁰ O'Connor GJ 6/20/96 at 12 (O'Connor cites Cornelius as the source for this allegation); Cornelius GJ 7/25/96 at 69-73 ("there were a lot of checks to cash, like \$5,000 or \$3,000 to cash" but "in the trip file, there's no corresponding receipts at all"); Wade GJ 6/4/96 at 12, 18-20 (this was repeated to the FBI by Kennedy); Carl GJ 6/4/96 at 20 (this was also repeated to the FBI by Cornelius, who showed them copies of some checks); Watkins GJ 2/28/95 at 47-48 (Watkins said Cornelius told him about "the petty cash and other things that she just -- she just was not sure about the check writing, the way they ran the operation, and so forth" around Wednesday, May 12); Cerda GJ 7/1/96 at 87 (Cornelius "told me that she had been looking at some of the documents in the Travel Office, and that she had found various checks that had been made out to cash"); *id.* at 90 (Cornelius told Cerda that "she found checks made out to Billy Dale or Gary Wright, to their own accounts, to either of themselves as opposed to

Office were soliciting kickbacks;"⁵⁵¹ that the press was "bringing in duty free carpets . . . without paying customs; that they were being served champagne and caviar;"⁵⁵² that there was suspicion of "embezzlement and/or skimming of funds;"⁵⁵³ or more generally that the employees in the Travel Office were "crooks;"⁵⁵⁴ that "people in the Travel Office would go on a trip . . . to another country and c[o]me back to the Travel Office and . . . get reimbursed for it . . . without

cash"); Lufrano GJ 7/17/96 at 7-9, 13 (Cornelius told Lufrano sometime by May 12 "about checks that were written up to cash"); Kennedy GJ 7/30/96 at 28 (Cornelius told Kennedy "that the checks [were] being written to cash in large amounts").

⁵⁵¹ O'Connor GJ 6/20/96 at 14-15 (O'Connor said that Harry Thomason passed this tip on to her while walking to a meeting on either Tuesday, May 11 or Wednesday, May 12); Holton GJ 7/2/96 at 18 (notes of Martens's White House Travel Office Management Review interview recorded Martens saying "Billy Dale made it clear to pres. and VP of marketing at Miami Air that some sort of remuneration would be required to keep his business"); Wade GJ 6/4/96 at 27 (Cornelius told the FBI that "the individual in the Travel Office said, 'If you want that contract, you'll have to kick back five percent'"); Lindsey GJ 4/1/96 at 14 (sometime in February, March, or April 1993, he was told by Harry Thomason that "they were demanding kickbacks"); Cerda GJ 7/1/96 at 86 (Cornelius told Cerda that at her meeting with Harry Thomason in early May, Thomason said that "Billy Dale's operation had solicited kick-backs from another charter company that had wanted to do business with the White House" and that the name of the other company was "Miami Air"); Sample GJ 6/13/96 at 30-32 (Sample stated that either "Ross Fischer or Bob Conser" of "Miami Air" "was of the opinion that there were some kickbacks, and they didn't really care to do business with the White House" and "allude[d] to the fact that there was probably some solicitation there," which Sample then passed on to Martens, which she said was "very irresponsible" of her); Thomason GJ 7/17/96 at 90 (Thomason refused to take responsibility for the word kickback, saying "the word kickback was sort of a product of all the buzz just going on in all these meetings. There were all these things thrown out"); *Id.* at 91-92 (Thomason claimed to have learned of the kickback/Miami Air allegation from a reporter).

⁵⁵² Post-Ross GJ 7/1/96 at 12, 25-26 (Thomason was her source).

⁵⁵³ Bourke GJ 6/4/96 at 14 (this allegation was passed on to the FBI by Kennedy).

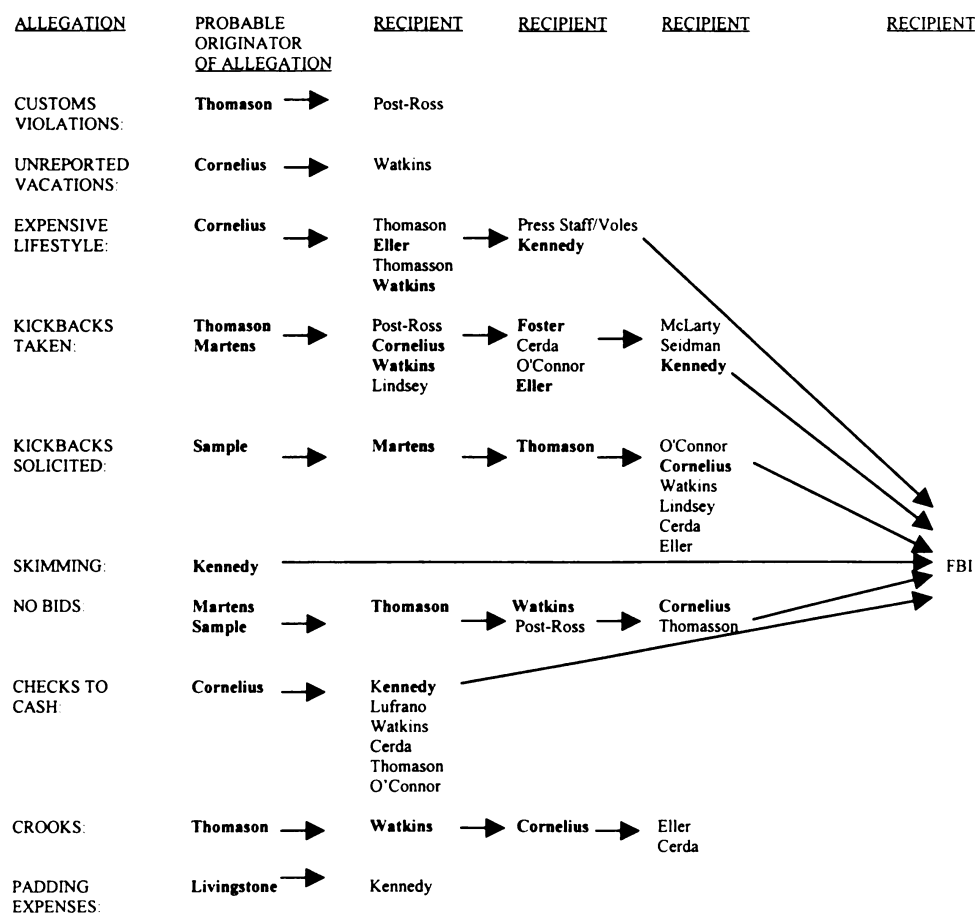
⁵⁵⁴ Cerda GJ 7/1/96 at 84-85 (sometime between April 15 and May 7 Cornelius told her that Watkins had taken Cornelius into his office and "said to her, a source -- he didn't tell her who the source was -- has told us that people in that office were crooks and that there may be some wrongdoing"); Cornelius GJ 7/25/96 at 107-08, 173-74 (Cornelius said Watkins told her they were "crooks" who had "been on the take for years," which caused Cornelius to think, "gosh, if they think these guys are crooks, they must be crooks," which she then shared with Jeff Eller).

receipts;"⁵⁵⁵ and "that they played golf like on Wednesday [] or they would take days out of the office."⁵⁵⁶

⁵⁵⁵ Livingstone GJ 7/1/96 at 37-38 (Craig Livingstone, the only one that mentions this genre of allegations, passed this rumor on to Kennedy, and said that he does "not recall specifically where I got it from"); Kennedy GJ 7/30/96 at 10-11 (confirming that Livingstone passed on rumors that the "Travel Office was not being run on the up and up," though Kennedy could not remember what Livingstone specifically alleged).

⁵⁵⁶ Cornelius GJ 7/25/96 at 64-65 (Cornelius said she did not view this as necessarily "illegal," but rather as "inefficient" though she still passed it on to Watkins when he asked her if she had seen anything since moving to the Travel Office).

The following chart identifies the various allegations and summarizes how they were communicated among White House staff:⁵⁵⁷



Billy Dale was aware of the existence and the general nature of these accusations. On May 13, Director of Press Advance Anne Edwards said Billy Dale told her "he really needed to talk to me, and he didn't usually say that. And he pulled me aside and told me that he was worried about his job, that there had been a person complaining[,] that he had a memo he made -- he told -- he said a memo that -- that there were complaints about his work."⁵⁵⁸ Edwards

⁵⁵⁷ The individuals identified with bold-faced type communicated allegations to others.

⁵⁵⁸ Edwards GJ 6/6/96 at 3, 15-16. The March 3, 1993 memo from Martens to Thomason turned up in the press's hands contemporaneously with the firings, Martens GJ

promised Dale she would "stick my nose in and find out what is going on," but the firings occurred before she could return from an overseas trip.⁵⁵⁹

4. Friday, May 14, 1993.

On May 14, KPMG Peat Marwick began its Travel Office audit. That audit quickly produced evidence of Dale's mishandling of Travel Office petty cash. Also on May 14, Jeff Eller demanded and secured a meeting with Chief of Staff "Mack" McLarty, in which he argued for immediate resolution of the Travel Office inquiry. And, on May 14, David Watkins had his only conversation with Mrs. Clinton regarding the Travel Office.⁵⁶⁰

a. Peat Marwick Began its Travel Office Review.

Peat Marwick began its Travel Office investigation the morning of May 14. This investigation revealed a major lack of organization, numerous inconsistent financial practices, and serious financial mismanagement in the Travel Office. Among the missing and crucial sources of information were ledgers, cash logs, and the like. Though the impetus to examine the Travel Office may have arisen from self-interest and baseless speculation, evidence of financial irregularities was real.

At approximately 7:00 a.m. on May 14, several White House staffers, including Jennifer O'Connor, Patsy Thomasson, Kennedy, and Foster, met with the Peat Marwick auditors to work

7/16/96 at 115, and this is the only memo by a "he" criticizing Dale's office known to exist in the record compiled in this and other investigations (Memorandum from Martens to Thomason 3/3/93, OIC Bates No. AL-DC-00007620 (with fax cover sheet and summary attachment)).

⁵⁵⁹ Edwards GJ 6/6/96 at 15-16.

⁵⁶⁰ Also sometime on May 14, World Wide Travel agent Fan Dozier arrived in Washington, D.C., and Cornelius told her, as she had been told to say by Watkins, "that she should just wait until we needed her, if we needed her." Cornelius GJ 7/25/96 at 137.

out a plan for the audit.⁵⁶¹ Larry Herman of Peat Marwick testified that these White House officials and staff "had indicated that they had some questions about cash or internal controls or petty cash or that area of concern."⁵⁶² Kennedy testified that, in conversations he was not part of, it was decided that the Travel Office employees would not be told the audit's real purpose but, rather, that the auditors' work was part of the National Performance Review.⁵⁶³ At the meeting, a mechanism was set up so the auditors could report on their progress.⁵⁶⁴

The Peat Marwick audit commenced early on May 14, 1993 and continued through May 16, 1993. Thomasson advised the Travel Office staff that Larry Herman of Peat Marwick would conduct the review.⁵⁶⁵ Herman said the Travel Office staff "was reluctantly cooperating."⁵⁶⁶ Billy Dale testified that prior to Friday morning on May 14, 1993, the Travel Office had "never [had] any audits from the time that [he] was director except maybe one in 1986 and somebody

⁵⁶¹ O'Connor GJ 6/20/96 at 42-43; Herman GJ 6/20/96 at 13; Kennedy GJ 7/30/96 at 73-76; Thomasson GJ 7/24/96 at 38-40. Matt Moore testified that Peter Segal, Paul Toback, himself, and possibly others (including O'Connor and Foucart) were also present. Moore GJ 6/20/96 at 28. Moore testified he did not recall hearing of any possible wrongdoing in the Travel Office prior to the May 14 meeting. Id. at 29.

⁵⁶² Herman GJ 6/20/96 at 63-64.

⁵⁶³ Kennedy GJ 7/30/96 at 73-74; Herman GJ 6/20/96 at 19-20. The Administration initially claimed publicly that the review of the Travel Office was part of the National Performance Review. Statement of Dee Dee Myers, White House Press Briefing (5/19/93); Statement of Dee Dee Myers, White House Press Briefing (5/20/93); Statement of George Stephanopoulos, White House Press Briefing (5/21/93). The White House was later forced to withdraw that claim. Statement of George Stephanopoulos, White House Press Briefing (5/26/93).

⁵⁶⁴ Kennedy GJ 7/30/96 at 74.

⁵⁶⁵ O'Connor GJ 6/20/96 at 43. O'Connor testified that she was present during the audit to ensure no files or other evidence were taken from the office. Id. at 44. She also conducted interviews of the Travel Office staff to see how the office was run. Id. at 87.

⁵⁶⁶ Herman GJ 6/20/96 at 78.

came in and asked some questions."⁵⁶⁷ Dale said he was told that Peat Marwick was there to "see if there was any way that duties and responsibilities could be streamlined."⁵⁶⁸

Peat Marwick reported its findings to Thomasson for the first time at approximately 10:00 a.m., and then every 2 to 2 ½ hours thereafter for the rest of the day.⁵⁶⁹ Not long into the review, Herman advised that "the bookkeeping practices were so bad that he couldn't actually do an audit, because to do an audit, you need to compare two sets of books, and they only had one set of books, so he couldn't compare them to anything else."⁵⁷⁰ Herman described it as "an ungodly mess in terms of records . . . [T]he recordkeeping was basically piling up for, I would estimate over 10 years, in a closet in the room."⁵⁷¹

⁵⁶⁷ Dale GJ 7/9/96 at 30. At his trial, Dale provided greater detail about the review that occurred in 1986. He testified that a "Mr. Richard White . . . came in, and at this date I am not certain what records he looked at. He looked at some of them, made a determination that there was nothing wrong, and wrote his report to the best of my knowledge." Trial Testimony of Billy R. Dale at 237, United States v. Dale, No. CR 94-469 (D.D.C. Nov. 9, 1995).

⁵⁶⁸ Dale GJ 7/9/96 at 59-60. Dale said that because he did not understand the "review" to be an actual audit, Dale had not thought it necessary to tell Peat Marwick about two separate cash ledgers or a second petty cash fund. Id. at 60-61.

⁵⁶⁹ Thomasson GJ 7/24/96 at 47-48.

⁵⁷⁰ O'Connor GJ 6/20/96 at 50. Herman explained it was not an audit, which "look[s] at an a [sic] income statement and a balance [sheet] that a client or a business provides," as opposed to the Travel Office review, which was a "focus on the financial management system and the petty cash procedures, because that was where some weaknesses and potentially some missing money was identified." Herman GJ 6/20/96 at 55-56. Even though it was not an audit using formal accounting standards, Herman said he followed "something technically known as 'agreed-upon procedures,' which means that it's not an audit, but we've followed some procedures which are standard procedures in the profession." Id. at 56-57.

⁵⁷¹ Id. at 25-26.

Dale later testified that he was aware that something more than a "streamlining" review was underway.⁵⁷² Dan Russell, a Peat Marwick employee assisting with the review, asked Dale for his petty cash log, and Dale gave Russell the general petty cash log without mentioning that there were certain items not recorded in that log.⁵⁷³ Dale also gave Russell the check register recording amounts for checks cashed in amounts below the amount written on the actual check.⁵⁷⁴ Although Dale realized that the petty cash and check register records were being scrutinized, he made no mention of the ledger, known only to him, that he kept for the second surplus fund.⁵⁷⁵ Russell eventually discovered four checks totaling approximately \$14,000 that had been cashed, but which had not been recorded in the general petty cash ledger given to him earlier by Dale.⁵⁷⁶

Russell then went back to Dale and asked Dale if he "had any additional petty cash logs," and Dale said that "is when we started looking for them and I discovered that they were gone."⁵⁷⁷ According to Dale, portions of the general civil ledger were missing.⁵⁷⁸ At this point, Dale again

⁵⁷² Trial Testimony of Billy R. Dale at 234, United States v. Dale, No. CR 94-469 (D.D.C. Nov. 9, 1995) (when Russell asked about the four unaccounted for checks "it became apparent to me that this was not just a typical review of the office").

⁵⁷³ Id. at 230-31.

⁵⁷⁴ Id. at 160-65.

⁵⁷⁵ Dale GJ 7/9/96 at 61.

⁵⁷⁶ Trial Testimony of Billy R. Dale at 231, United States v. Dale, No. CR 94-469 (D.D.C. Nov. 9, 1995). Although the transcript at page 231 says that five checks were at issue, apparently this was a misstatement by the prosecutor, as subsequent questioning by the United States refers to only four checks being at issue. Id. at 232, 234.

⁵⁷⁷ Id. at 61.

⁵⁷⁸ Dale maintained that the ledgers must have been taken by Cornelius or someone working for her. Dale GJ 7/9/96 at 51-55. Dale claimed that in February, 1993, the general petty cash ledger's loose-leaf binder was becoming overfilled, so he removed all but the preceding year's pages, and placed the other ten year's worth into a large manila envelope. Dale GJ 7/9/96

made no mention to Peat Marwick about the second, secret petty cash fund or its ledger because, he said, Peat Marwick "never asked me about it."⁵⁷⁹

Around three or four o'clock, Peat Marwick found a check in the amount of \$5,000, which was inconsistent with the entry in the general petty cash ledger Dale had given Russell earlier in which only \$2,000 was recorded as the total amount received for the check.⁵⁸⁰ Dale said that initially he told Russell "that the money was not in the petty cash fund."⁵⁸¹ Sometime later that day or the next,⁵⁸² Dale told Russell that he "had \$2,800 in that drawer, [he] showed them the \$2,800 from the second petty cash."⁵⁸³ Herman said that Russell reported that Dale "did not have any additional information on where the records from the journal was missing, or did not recall fully what the money was used for."⁵⁸⁴ Peat Marwick reported this information to Patsy Thomasson.⁵⁸⁵

at 50.

⁵⁷⁹ Dale GJ 7/9/96 at 62.

⁵⁸⁰ Id. at 232-33; Dale GJ 7/9/96 at 60-62.

⁵⁸¹ Trial Testimony of Billy R. Dale at 232, United States v. Dale, No. CR 94-469 (D.D.C. Nov. 9, 1995).

⁵⁸² Id. at 233.

⁵⁸³ Dale GJ 7/9/96 at 60-61.

⁵⁸⁴ Herman GJ 6/20/96 at 29-30. There were no records found that could support what the funds of the unreconciled petty cash checks were used for.

⁵⁸⁵ Id. at 27 (testifying that "we informed her that we were having trouble reconciling all of the petty cash transaction[s] that we were beginning to look at"). Herman said that he reported the findings regarding the cash transactions at various time throughout May 14 to Thomasson, O'Connor, and Foucart. Herman GJ 6/20/96 at 35-36.

b. Eller Demanded a Meeting With McLarty.

Also on May 14, Eller, went to Chief of Staff McLarty's office without an appointment and insisted on a meeting.⁵⁸⁶ Ricki Seidman, a White House Deputy Communications Director, also attended and arranged for Foster to join them.⁵⁸⁷ McLarty testified that Eller was forceful in recommending that the Travel Office employees be fired immediately.⁵⁸⁸ McLarty also testified that Eller was extremely frustrated that the audit was delaying Eller's preferred action.⁵⁸⁹ Seidman confirmed McLarty's recollection.⁵⁹⁰ Foster's notes reflect the following: "Ricki calls me to Mack's office. Eller presses for immediate action . . . Eller states need to do by 5PM."⁵⁹¹ McLarty said he told Eller they "were not going to proceed with any decisions on this day" and that "Mr. Foster strongly agreed with that and expressed a similar view."⁵⁹²

c. Mrs. Clinton and David Watkins Had Their Single Substantiated Pre-Firing Conversation Which Occurred by Telephone.

At approximately 4:14 p.m. on Friday, May 14,⁵⁹³ David Watkins and Mrs. Clinton had their only direct conversation with one another regarding the Travel Office situation.⁵⁹⁴ Because

⁵⁸⁶ McLarty House Depo. 7/12/96 at 34; McLarty GJ 7/31/96 at 65; Eller GJ 7/17/96 at 54 (Eller claims no recollection of this meeting).

⁵⁸⁷ Seidman GJ 7/18/96 at 21-24; McLarty GJ 7/31/96 at 65; GJ 95-2 Exh. 241 (Foster's notes).

⁵⁸⁸ McLarty GJ 7/31/96 at 68-69.

⁵⁸⁹ Id. at 65-73.

⁵⁹⁰ See Seidman GJ 7/18/96 at 20-30.

⁵⁹¹ GJ 95-2 Exh. 241; see also Seidman GJ 7/18/96 at 20; Eller GJ 7/17/96 at 54.

⁵⁹² McLarty House Depo. 7/12/96 at 35; see also McLarty GJ 7/31/96 at 69-70.

⁵⁹³ See, infra, Subsection (D)(6)(b) for discussion of telephone billing records placing this as the likely time for this conversation.

of this conversation's potential significance, we describe in some detail the evidence developed relating to this phone call.

On the afternoon of May 14, Patsy Thomasson met with Foster to update him on the audit's progress. During this meeting, Foster talked with Watkins by telephone and suggested that Watkins call Mrs. Clinton to update her, which he did.⁵⁹⁵ Patsy Thomasson said that Foster told Watkins "that the clients were concerned" and that Watkins should "report in."⁵⁹⁶ Watkins, who was out of town to attend his daughter's college graduation,⁵⁹⁷ said that he had been on the phone updating Vince Foster about the Peat Marwick review when Foster told Watkins, "'Well, I would like for you to talk to Hillary directly and tell her what's happening.'"⁵⁹⁸ Foster tried to transfer Watkins directly to Mrs. Clinton, but Watkins was cut off and had to call back.⁵⁹⁹ When Watkins was initially put off because Mrs. Clinton was purportedly getting ready to attend a social event, Watkins persisted: "Well, I think I need to talk to her. She really wants to talk to me or something, so just a few minutes . . . I'll only take a minute."⁶⁰⁰

⁵⁹⁴ Watkins FBI Int. 8/10/93 at 4.

⁵⁹⁵ Thomasson GJ 7/24/96 at 57. Patsy Thomasson testified that she heard Foster tell Watkins to call Mrs. Clinton, and Watkins's notes confirm that he did make this call. Id. at 50-52; GJ 95-2 Exh. 164. Watkins's golf partner for that weekend said Watkins "was on the phone constantly" on Friday May 14 with Foster, McLarty, Thomasson, and Mrs. Clinton, both placing and receiving calls. Cloud 6/4/99 at 15, 29. Telephone records corroborated this assertion, though not other aspects of Mr. Cloud's description of Watkins's phone activity. See, infra, Subsection (D)(6)(b) and accompanying notes.

⁵⁹⁶ Thomasson GJ 7/24/96 at 51, 184.

⁵⁹⁷ Id. at 53-54.

⁵⁹⁸ Watkins GJ 2/28/95 at 53.

⁵⁹⁹ Id.

⁶⁰⁰ Id.

i. Watkins's Description of His Phone Conversation With Mrs. Clinton.

Watkins has repeated the substance of this conversation many times. Each of Watkins's descriptions follows:

a) Watkins's Description of His Conversation With Samuel L. Bowman.

Watkins described his conversation with the First Lady to his friend and business partner Samuel L. Bowman.⁶⁰¹ Bowman was married to Vince Foster's sister, Sharon, from 1964 through 1998 and had rented David Watkins's home in Arkansas.⁶⁰² He had also been Watkins's roommate in college.⁶⁰³ Bowman remembered having a conversation with Watkins at their office in Little Rock, Arkansas, sometime in 1996, during which Watkins recalled his May 1993 conversation with the First Lady.⁶⁰⁴ Bowman testified that Watkins told him about that conversation with Mrs. Clinton, saying:

[Watkins was] in Little Rock and golfing, and halfway through the golf match he went to the telephone to call the White House to apparently check on Vince, what was going on and update himself. And he gets on the phone with Mrs. Clinton, as he's describing this to me, she brings him up-to-date on whatever was going on, and then he -- the only thing he described about the conversation to me, and with specificity, was as she was hanging up, she said, "David, you just might have to fire them." And as he described this to me, he had sort of an exasperated look on his face.⁶⁰⁵

⁶⁰¹ Bowman GJ 6/2/99 at 15-16

⁶⁰² Id. at 6-7.

⁶⁰³ Id. at 3-4.

⁶⁰⁴ Id. at 15-16, 18.

⁶⁰⁵ Id. at 6-8, 15-16.

b) Watkins's Handwritten Notes of May 31, 1993.

May 14 . . . Watkins talks to Foster - who says he's getting more pressure from First Lady to act - Would Watkins call First Lady & Eller. Watkins calls First Lady - Describes situation with Audit Team. F Lady says she thinks these people should be out. Harry says 'We can do the job with his assistance - Watkins says he will get report from Peat Marwick & take action next week.'⁶⁰⁶

c) Watkins's Handwritten Notes of June 2, 1993.

Hillary telephone conversation with D. Watkins on Friday May 14 "Harry says his people can run things better; same money, etc. And besides we need those people out -- We need our people in -- We need the slots."⁶⁰⁷

d) FBI Interview of Watkins on August 10, 1993.

WATKINS called HILLARY CLINTON and advised her of the findings of the review. She stated action need[ed] to be taken immediately to be certain those not friendly to the Administration were removed and replaced with trustworthy individuals. WATKINS and HILLARY CLINTON discussed the impending twenty-five percent reduction in staff by October 1993 and the idea of replacing the individuals with an outsource agency to reduce costs.⁶⁰⁸

⁶⁰⁶ GJ 95-2 Exh. 164 (Watkins's notes dated May 31, 1993) (emphasis in original). Watkins recalled this conversation and stated that the substance of it was accurately described in his note. Watkins Int. 11/22/96 at 23. These notes were turned over by Watkins to Todd Stern along with other documents during the process leading up to the White House Travel Office Management Review. Stern confirmed that the handwriting in the note was Watkins's. Stern GJ 7/10/96 at 194-95; Podesta GJ 7/18/96 at 35.

⁶⁰⁷ Watkins's notes 6/2/93, OIC Bates No. 542-DC-00001499.

⁶⁰⁸ Watkins FBI Int. 8/10/93 at 4-5 (capitalization in original). White House Associate Counsel Cliff Sloan transcribed a description of this interview provided by Watkins's lawyer, "Vince Foster had told David Watkins to report to the First Lady regarding the status of the matter 'Tried to reach her for ½ hour' 'His impression she thought prompt necessary action in light of findings' 'She didn't mandate anything' 'She talked re 25% cut, other consid[erations] 'He said he'd take into account in reviewing P[eat] M[arwick] audit' 'HRC -- better people could be found if these people could not be . . . trusted.'" Sloan GJ 8/1/96 at 44-46.

e) Statements Related to or Contained in the Watkins Memorandum.

Watkins's assistant, Matt Moore, testified that when Watkins, Patsy Thomasson, and Moore sat down on September 8, 1993 for Watkins to dictate an outline of what became the Watkins Memorandum to Moore, Watkins "indicated he had one conversation with the First Lady."⁶⁰⁹

Early and later drafts of the Watkins Memorandum reflected Watkins's conversation with Mrs. Clinton. An early draft reported:

Foster regularly informed me that the First Lady was concerned and desired action -- the action desired was the firing of the Travel Office staff. On Friday, while I was in Memphis, Foster told me that it was important that I speak directly with the First Lady that day. I called her that evening and she conveyed to me in clear terms that her desire for swift and clear action to resolve the situation. She mentioned that Thomason had explained how the Travel Office could be run after removing the current staff -- that plan included bringing in World Wide Travel and Penny Sample to handle the basic travel functions, the actual actions taken post dismissal -- , and in light of that she thought immediate action was in order.⁶¹⁰

A later draft said that in his May 14 telephone conversation with her, "she conveyed to me in clear terms her desire for swift and clear action to resolve the situation;" and that "she thought that immediate action was appropriate."⁶¹¹

⁶⁰⁹ Moore GJ 6/27/96 at 102. Moore said he made his September 8 notes of his conversation with Watkins contemporaneously as Watkins was speaking to him. Id. at 97.

⁶¹⁰ GJ 95-2 Exh. 69-E at 2.

⁶¹¹ GJ 95-2 Exh. 69-N at 2. The underscored language above appears on the draft memorandum in Moore's handwriting. See Moore GJ 6/27/96 at 73.

f) Watkins's GAO Interview on December 9, 1993.

The report of Watkins's GAO interview reflected Watkins's discussion with Mrs. Clinton as follows:

Mr. Foster asked Mr. Watkins to give her an update on the situation on May 14. Mr. Watkins told her on May 14 that Peat Marwick had found sloppy management of the Travel Office. She said that Mr. Thomason had talked to her and said that he could recommend people to do the Travel Office work. She mentioned the 25 percent staff reduction goal and said it would be good to have 'our people' working in the office. She said that the administration had been criticized at that time for being slow in filling positions, had delayed too long, and said that they needed 'our' people in operations. Mr. Watkins did not consider the First Lady to be exerting pressure on him.⁶¹²

g) Watkins's Grand Jury Testimony on February 28, 1995.

Watkins testified before the grand jury about the conversation with Mrs. Clinton as follows:

And then during that conversation, she expressed to me, she said, "Well, you know, we need to have our people in there." She said, "I have talked to many people that have been in the White House before, and there are just too many people, if you don't have your own people in -- there are too many leftovers that can create and cause us problems." And said, "This is something that we should have our people in there."⁶¹³

h) FBI Interview of Watkins on January 15, 1996.

The report of Watkins's interview about the conversation with Mrs. Clinton reflects the following:

WATKINS went over the reports regarding the Peat Marwick review with HILLARY CLINTON. Throughout the conversation, HILLARY CLINTON remained calm and she commented she had been told by others that in transitions,

⁶¹² Watkins GAO Int. 12/9/93 at 17.

⁶¹³ Watkins GJ 2/28/95 at 53. Watkins testified that he understood the quote he attributes to Mrs. Clinton concerning "our own people" to refer to bringing in the Little Rock travel agency World Wide Travel, who Watkins considered to fall within the scope of "our people" because they had been involved in the campaign." Watkins GJ 2/28/95 at 54, 91.

"We need to get them out and our people in." HILLARY CLINTON went on to say, "Besides, with the twenty-five percent reduction, we need the slots; if necessary, fire them."⁶¹⁴ WATKINS did not take this as direction by HILLARY CLINTON to fire the Travel Office staff, but as a direction to move quickly.⁶¹⁵

**i) Watkins's Testimony Before the House Committee on
January 17, 1996.**

Finally, Watkins testified before the House Committee as follows:

I feel that in my conversation, my one and only conversation with the First Lady, it was very cordial, businesslike, very much a review of what it was after the first day of the Peat Marwick investigation or review, and I reported to her very -- just findings of Peat Marwick. She understood them, indicated to me that Harry had said we could save money, we needed our people in, and those people out, we needed the slots. . . . [O]n that conversation . . . is I did not feel any pressure from the First Lady.

In that conversation she did not direct me to fire them. There was a -- Congressman, we have been many, many times, there was a decision to reduce the White House staff, the entire White House by 25 percent. Part of that reduction would have come from the White House Travel Office. That's what Mrs. Clinton referred to when she said we need the slots, and what we were talking about is that we need to make it -- to -- to remove some people and make it a more efficient operation, we need the slots.⁶¹⁶

⁶¹⁴ The language, "if necessary, fire them," appears only in this report of the interview. The FBI agent's handwritten notes do not indicate that Watkins was quoting Mrs. Clinton, although the agent used quotation marks in the final version of his report. See Notes of Interview of Watkins, 1/15/96, FBI File No. 29D-LR-35063-1A at 4.

⁶¹⁵ Watkins FBI Int. 1/15/96 at 7 (capitalization in original).

⁶¹⁶ White House Travel Office--Day Two: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 86 (1996)(testimony of David Watkins). A phrase similar to the one Watkins's used -- "we need those people out" -- was attributed to the First Lady many years later by Linda Tripp, who "advised that while she was working near [Vince Foster's Secretary] DEB GORHAM's desk, TRIPP had to answer the phone at GORHAM's desk whenever GORHAM was not there. TRIPP recalled once answering GORHAM's phone and seeing a document about the White House Travel Office. TRIPP advised [that] the memo had VINCE FOSTER's and BILL KENNEDY's name[s] typed on it and, at the top, HILLARY CLINTON's handwriting. TRIPP advised the handwritten note said 'We need these people out and our people in' and was signed 'HRC.'" Tripp FBI Int. 1/18/98 at 7 (capitalization in original). When Deborah Gorham was asked about the matter, she denied ever having seen such a document and said that the procedures she and Foster followed for handling memoranda were such that such a document would not have been left "in open view." Gorham Int. 6/12/00 at 2.

ii. Mrs. Clinton's Description of Her Phone Conversation With David Watkins.

a) Written Answers to GAO on April 6, 1994.

In connection with the GAO's Travel Office investigation, the GAO submitted five enumerated written questions for Mrs. Clinton to answer in March 1994, the fourth of which asked: "Is Mr. Watkins's characterization of his discussion with you, as recorded by us, accurate? If not, how would you describe the discussion?"⁶¹⁷ The unsworn response given by Associate White House Counsel Neil Eggleston on Mrs. Clinton's behalf was as follows:

Mrs. Clinton does not recall this conversation with the same level of detail as Mr. Watkins. She recalls that on Friday, May 14, she had a very short telephone call with Mr. Watkins. Mr. Watkins stated that Mr. Foster had mentioned that Mrs. Clinton was interested in knowing what was going on with the Travel Office. Mrs. Clinton knew that Mr. Watkins was out of town. Mr. Watkins conveyed to her that even though he was not in Washington, his office was taking appropriate action.⁶¹⁸

b) OIC Deposition on July 22, 1995.

Mrs. Clinton's next description of the May 14, 1993 Watkins conversation occurred on July 22, 1995. Mrs. Clinton gave sworn testimony before the OIC at the White House in connection with the investigation of Vincent Foster's death, which included the following testimony regarding the Travel Office:

Q: Did you have any discussion with Mr. Foster, or a discussion at which Mr. Foster was present, about the White House Travel Office prior to the firing of the employees on May 19, 1993, that you remember?

A: I recall two brief conversations with Vince, but I don't know when they occurred. So, I don't know whether they were before or after your

⁶¹⁷ Eggleston GJ 7/18/96 at 82; GJ 95-2 Exh. 254.

⁶¹⁸ Mrs. Clinton's written responses to GAO's written questions 4/6/94, OIC Bates No. AJ-DC-00001520 at 1521; GAO's written questions, GJ 95-2 Exh. 254.

reference to the firings on May 19th. So, I can't place them in time. But I did have two brief conversations with him.

....

Q: Focusing on the first discussion first, would you tell us what was said in that discussion?

....

A: Well, all I can recall is that I said to him, or he said to me, it's not specific in my memory, something was happening about the Travel Office. And I, you know, I said, what's going on, or something to that effect. And he said, you know, we just have some tough decisions to make and we're moving on them, something to that effect. I can't say that's what he said. I can only give you a general feeling for my vague memory of what he said. The second conversation was when he [Foster] said that David Watkins was on the phone and handed me the phone.⁶¹⁹ And David Watkins said he was at his daughter's graduation and that things were being taken care of in the Travel Office. And that was the extent of my conversations that I recall.

Q: Do you remember asking Mr. Foster on the first occasion, or Mr. Watkins on the second occasion, any questions about what was going on?

A: I just don't remember.

....

Q: Did you ever say to Mr. Foster that we need to get our people in there, with respect to the Travel Office?

A: I don't recall saying that, no.

Q: This is something that I just want to follow-up by asking you, when you say you don't recall, does that mean that you are pretty sure that it didn't happen, or does it just mean that you don't recall whether it happened or not?

A: I don't recall whether it happened or not. I have no recollection of that.⁶²⁰

⁶¹⁹ Lisa Caputo said that during January 1996 meetings with her staff, Mrs. Clinton said that Vince Foster was present when she had her conversation with Watkins. See Caputo GJ 8/1/96 at 42.

⁶²⁰ H. Clinton Depo. 7/22/95 at 9-12.

c) Sworn Statement to Congress on March 21, 1996.

Mrs. Clinton's final discussion of her view of this conversation occurred on March 21, 1996, when she provided written answers to Congress to questions that had been posed to her by the House Committee on Government Reform and Oversight.⁶²¹ Unlike the written responses to the GAO, these written responses were given under oath and signed by Mrs. Clinton.⁶²² Mrs. Clinton first incorporated the answers that had been previously given to the GAO into her response to Congress.⁶²³ Mrs. Clinton responded in relevant part to the congressional questions as follows:

[Question No.] 7.

Identify and set forth the information sought in the preliminary statement for all communications that you had at any time with Harry Thomason or any individual acting on his behalf regarding any White House Travel Office matters, the personnel employed in the White House Travel Office, or any proposed or actual activities of Mr. Thomason at the White House, including but not limited to, all aviation matters involving Mr. Thomason, Darnell Martens, and/or TRM Incorporated, or other transportation related issues, and any reviews, civil or criminal investigations. . . .

Response to No[.] 7 . . .

During the evening of Friday, May 14, 1993, I remember a brief telephone conversation with David Watkins, Assistant to the President for Management and Administration, who was out of the city. Mr. Foster was present, and he indicated that Mr. Watkins wished to speak to me about the Travel Office matter. Mr. Watkins stated that Mr. Foster had told him that I was interested in knowing what was going on with regard to the Travel Office. He told me that he was having a review conducted, and that, although he was out of town, his office was taking appropriate action. He may have mentioned that KPMG Peat Marwick was

⁶²¹ GJ 95-2 Exh. 8.

⁶²² Ricketts GJ 6/6/96 at 9.

⁶²³ GJ 95-2 Exh. 8 at 1-4.

conducting some kind of audit or review. I recall that I thanked him for the report and let him know that I was glad he had taken the situation in hand.

I don't believe I had any conversation with Mr. Watkins about the Travel Office before or after this one telephone call. While I do not recall the specific details of our conversation, I did not direct that any particular action should be taken, nor did I make particular comments about what should be done (e.g., that I thought the Travel Office people "should be out"). I may have expressed the view that appropriate action should be taken if the circumstances warranted it. I do not recall telling Mr. Watkins I was going to an event with the President. I do not know how Mr. Watkins may have construed my remarks.

I don't recall ever speaking to Mr. Watkins about Mr. Thomason's actual or proposed White House activities. I do not believe I ever spoke to Mr. Watkins about aviation matters involving Mr. Thomason, Mr. Martens, and/or TRM Incorporated, or transportation issues, reviews, or investigations related to these two men or TRM Incorporated.⁶²⁴

d. Watkins Told the OIC That He "Felt Better" After His Phone Conversation With Mrs. Clinton.

Watkins stated that he "fe[lt] much better" after his conversation with Mrs. Clinton because she was calm and reasonable during the call.⁶²⁵ However, Watkins also stated that he believed "there would be hell to pay" if a decision was not made immediately.⁶²⁶ Watkins called Harry Thomason late in the evening of May 14 to advise him of his conversation with Mrs. Clinton and the Peat Marwick review's progress.⁶²⁷

⁶²⁴ Id. at 5, 11-13.

⁶²⁵ See Watkins Int. 11/22/96 at 25.

⁶²⁶ Id. at 39.

⁶²⁷ Id. at 25.

5. Saturday, May 15, 1993: Peat Marwick Reports its Findings of Suspicious Financial Records and Transactions to the White House and the FBI.

Around 1:00 p.m. on Saturday, on May 15, 1993,⁶²⁸ Herman had a meeting with either Kennedy or Foster for about a half an hour during which time Herman "reported again about the findings of petty cash, the financial filing problem."⁶²⁹ The auditors found substantial problems with record keeping and general mismanagement, and were unable to reconcile certain cash expenditures. The Peat Marwick team determined that although they had enough information to prepare a report, they could not conduct a thorough audit because the records were in such disarray that performing a complete review of the documents would take several weeks.⁶³⁰ The auditors also reported the Travel Office records were in "shambles," there was no financial "control consciousness," there were \$18,000 in checks with no proper accounting, and the audit would continue.⁶³¹

⁶²⁸ Also on Saturday afternoon, McLarty said he called Foster to get an update on the Travel Office, because he was scheduled to see the First Lady at a social engagement in New York that evening, and McLarty "wanted to be prepared to give her a factual response." McLarty GJ 7/31/96 at 77. McLarty said, though, that the subject "just simply never did come up" with the First Lady when he saw her. Id. at 79.

⁶²⁹ Herman GJ 6/20/96 at 41-42.

⁶³⁰ Herman GJ 6/20/96 at 66-68; see also O'Connor GJ 6/20/96 at 50; Carl GJ 6/4/96 at 33-39. Dan Russell, a member of the Peat Marwick team, told Congress that in his opinion a formal audit would have been possible notwithstanding the state of the records, but it would have been a "major, major undertaking, given the condition." Russell House Depo. 3/27/96 at 59, 74.

⁶³¹ Kennedy GJ 7/30/96 at 86-88, 90-91; see also Kennedy's notes 5/12/93, OIC Bates No. 542-DC-00001489; O'Connor GJ 6/20/96 at 52-53.

Kennedy said, "I think this is reason enough to alert the FBI."⁶³² Herman said he was asked "to come back to the approximately 5 o'clock meeting to report the same thing, and . . . to meet two FBI agents."⁶³³

David M. Bowie was the Washington, D.C. field office supervisor that FBI Headquarters had assigned to investigate Kennedy's allegations.⁶³⁴ When Bowie, accompanied by Tom Carl, attended a Saturday, May 15 meeting at the White House, he had already been advised by agents Richard Wade and Carl that there was a White House employee or employees who may be involved in some type of theft or misappropriation of funds in their constructive custody and control.⁶³⁵ Bowie also knew that the Department of Justice Public Integrity Section had already become involved in the matter, and that the White House had employed a private accounting firm to review the Travel Office.⁶³⁶ Bowie believed that the private accounting firm's review could only help, and not hurt, the investigation he was going to perform.⁶³⁷ By the time he showed up for this meeting, Bowie said that he had already determined that an investigation needed to be conducted:

⁶³² Cornelius GJ 7/25/96 at 139.

⁶³³ Herman GJ 6/20/96 at 43. This was the first time that FBI involvement had been mentioned to Herman. Id. at 43.

⁶³⁴ Bowie testified that he was first alerted to his impending involvement in the matter by fellow D.C. field office supervisor Jerome Campana on either May 13 or May 14, as a result of a conversation Campana had had with FBI Headquarters unit chief Richard Wade. Bowie GJ 6/6/96 at 3.

⁶³⁵ Id. at 7-8. Bowie himself had not had any direct contact with the White House prior to the Saturday meeting. Id. at 9.

⁶³⁶ Id. at 6, 10.

⁶³⁷ Id. at 11.

Allegations had been made by Catherine Cornelius, a White House employee, that there were no reporting or control systems in the Travel Office, and that there was evidence of expenditures for which there was no known support or documentation. In my opinion, these allegations were enough to initiate an FBI investigation.⁶³⁸

Bowie testified that this was standard procedure: "I can tell you, without a doubt, if the same situation occurred within 15 minutes from right now, I will tell you if a government employee is involved there [with allegations of government fraud] we will conduct an investigation, and it will be a full field investigation."⁶³⁹

At the meeting on May 15,⁶⁴⁰ Kennedy told Bowie and Carl that Cornelius had shown some documents allegedly corroborating her accusation to people at FBI Headquarters.⁶⁴¹ What

⁶³⁸ Id. at 13 (Bowie adopting the quoted language during his grand jury testimony from a statement he made on August 12, 1993 to the Department of Justice Office of Professional Responsibility); see also id. at 25-26 ("Q: You are saying that prior to your meeting on the 15th that you believed that there were allegations sufficient enough to initiate an FBI investigation . . . to open up a full criminal investigation of this matter A: I will stand by that."). Bowie stated that an official paper file on the matter was not opened by him for the FBI until May 18, though he viewed that step as merely clerical or bureaucratic, and "immaterial" to his view that he had decided to open an investigation prior to preparing that documentation. Id. at 45.

⁶³⁹ Id. at 15. Bowie said although it might have been meaningful to know that Cornelius wanted to run the Travel Office, that would not have affected his decision to open an investigation, because "the credibility of the information" rather than "the credibility of this witness" was his interest, and the "investigation will tell me whether or not that is true or false." Id. at 20-21; id. at 28-29 ("the issue of Ms. Cornelius's credibility, to me, in that -- at this very moment in time is immaterial. If what she says is true then an investigation will reveal that, and if it is not true then Ms. Cornelius will certainly know that"). Bowie said another reason he did not need to be concerned about Cornelius's credibility was that the allegation had been communicated to him by people at FBI Headquarters whom Bowie knew and trusted. Id. at 23 ("I know Richard Wade, I know the people that we are dealing with over there. I am not under the impression that they would deliver over to me spurious or false information"). Bowie said that he had been told that when FBI Headquarters contacted DOJ/Public Integrity, they had "already . . . made a preliminary determination that there was sufficient . . . grounds here if the allegations are true." Id. at 26-27.

⁶⁴⁰ Present at this meeting were Kennedy, Patsy Thomasson, Bowie, and FBI Headquarters Agent Tom Carl, who were joined at some point by the auditors. Bowie GJ 6/6/96 at 38-39; O'Connor GJ 6/20/96 at 52; Thomasson GJ 7/24/96 at 63-64; Herman GJ 6/20/96 at 42-

most impressed on Bowie the need for an investigation, however, was Peat Marwick's briefing. The Peat Marwick representatives told him that "they had found . . . poor record keeping," but "the thing that . . . concerned [Bowie] more than anything else" was that "they had found instances where Mr. Dale had wr[itten] checks to cash and there [was] no supporting documentation to say what happened to the cash, two or three thousand dollars here, there. And they relayed to [Bowie] an incident where they had actually talked to Mr. Dale about what had happened to a certain -- a two or three thousand dollar check, I don't recall what it was."⁶⁴² He had no answers as far as what had happened to the balance of this. He really couldn't explain to them what he had done with the money that he had actually gotten from the check that was issued to cash."⁶⁴³

46; Kennedy GJ 7/30/96 at 86-89.

⁶⁴¹ Bowie GJ 6/6/96 at 37. Even though Bowie himself was not shown Cornelius's documents referred to by Kennedy, Bowie said the documents would not have played any part in his determination to conduct an investigation, except that he might have used the documents to explore the specifics of the allegations against the Travel Office. Id. at 37.

⁶⁴² Id. at 40. Dale has testified that he was questioned by Russell about only one check -- the \$5,000 check to cash recorded in the ledger for only \$2,000. Bowie's statement apparently reflects his recollection of having been briefed on this \$3,000 discrepancy, which he mistakenly characterized as a briefing on a \$3,000 check. See id. at 39-40.

⁶⁴³ Id.; see also Carl GJ 6/4/96 at 34-35, 37. Dale's inability to provide a satisfactory explanation when asked about this discrepancy by Peat Marwick was clearly an important factor to the FBI. Peat Marwick's report contrasts with Dale's testimony before the House in which he stated that he was not given an opportunity to respond to this issue when it was discovered. See White House Travel Office--Day Three: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 14 (1996)("It is also important for people to understand that the most serious issue raised by Peat Marwick . . . was my failure to report five checks totaling \$14,000, in the office's petty cash-flow. No one from the administration ever asked for an explanation")(testimony of Billy R. Dale). Both Dan Russell and Larry Herman asked Dale for an explanation, and their dissatisfaction with that explanation was reported to Bowie and the FBI. See Russell House Depo. 3/27/96 at 25-26, 61-68; Herman GJ 6/20/96 at 32, 42-46; Bowie GJ 6/6/96 at 38-39.

6. Sunday, May 16, 1993.

During the day on May 16, 1993, the locks to the Travel Office were changed at the direction of Watkins or someone in his office.⁶⁴⁴ Fan Dozier, one of World Wide's agents called to Washington to remain on standby during this period,⁶⁴⁵ stated that on May 16 she telephoned Thomason in California because she was concerned that she was wasting her time in Washington waiting for something to happen with the Travel Office. Dozier said that Thomason expressed surprise she was not yet working in the Travel Office and that he would have to telephone Mrs. Clinton who would be very upset.⁶⁴⁶ Todd Stern's interview notes of Dozier indicate that a conversation occurred between Thomason and Dozier "probably [on] Sun. 5.16" during which "HT said he'd call HRC + she be very upset to hear they['re] still there."⁶⁴⁷

In addition, on May 16, McLarty had his second telephone contact with Mrs. Clinton. The OIC also investigated an allegation that Watkins, too, had a second phone conversation with Mrs. Clinton on this day. The OIC investigation did not, however, substantiate this allegation of a second Watkins-Mrs. Clinton telephone call.

a. McLarty Had a Conversation With Mrs. Clinton.

McLarty said he had a second conversation with Mrs. Clinton the evening of Sunday, May 16.⁶⁴⁸ McLarty said he had been invited to a dinner party in the White House residence, and prior to the other guests' arrival he had a brief conversation with Mrs. Clinton:⁶⁴⁹

⁶⁴⁴ Kennedy GJ 7/30/96 at 89-90.

⁶⁴⁵ Cornelius GJ 7/25/96 at 137.

⁶⁴⁶ Dozier FBI Int. 12/3/96 at 1.

⁶⁴⁷ OIC Bates No. 542-DC-00014771.

⁶⁴⁸ McLarty GJ 7/31/96 at 80. Chief of Staff McLarty said the two brief conversations

I think I simply told her that the review had proceeded in an orderly and timely way. I believe by that time -- and this is why I think Mr. Foster and I talked Sunday -- that the review did suggest or confirm that there was mismanagement and possible misconduct Her reaction, as I recall it, was -- she did not seem to be surprised that that was, you know, the report, and her reaction was, "Well, this is a serious matter. Let's be sure we make a decision on this. Let's stay after it." ⁶⁵⁰

McLarty testified that at the time of his conversation with Mrs. Clinton, he had not developed his options for dealing with the Travel Office and that he did not discuss options with Mrs. Clinton. ⁶⁵¹ McLarty agreed that one option certainly was to fire the Travel Office employees. ⁶⁵² It was clear to McLarty that Mrs. Clinton wanted him to make a decision about the

he had with Mrs. Clinton about the Travel Office on May 13 and May 16 were the only two he had with her on the subject before the firings. McLarty House Depo. 7/12/96 at 53-54. A notation indicating the possibility of a third conversation between the two appeared in the notes of press office member Lorraine Voles, reading, "S[usan] Thomases went to Mack. Hillary wants these people fired. Mack wouldn't do it. DW did not want to do it," with DW referring to Watkins. Voles GJ 6/20/96 at 29-30. Voles explained these were notes of a phone call she had with a Wall Street Journal reporter, Michael Frisbee. Id. at 29-30. Voles said she questioned McLarty as to whether Frisbee's information was true, and McLarty told her it was not. Id. at 30. Voles said that either McLarty or George Stephanopoulos called Frisbee back to deny the allegation. Id. at 32.

⁶⁴⁹ This discussion was not mentioned in the White House Travel Office Management Review. McLarty GJ 7/31/96 at 97; see also GJ 95-2 Exh. 68. It was also absent from McLarty's GAO report of interview. McLarty GJ 7/31/96 at 102-03. See Appendix A.

⁶⁵⁰ McLarty GJ 7/31/96 at 80-82. McLarty was also asked whether it was fair to characterize Mrs. Clinton as having said something to the effect of, "We will need to move forward with a decision." McLarty responded that that was not "quite a fair characterization." Id. at 83. McLarty was then confronted with his July 12, 1996 deposition before the House Committee in which he testified that Mrs. Clinton had told him on May 16 that "we will need to move forward with a decision." Id. at 83-84. McLarty responded by stating, "I have tried to be responsive, and I think I felt that you were pressing me, rightly or wrongly, for precise language, which I just simply cannot give you. Id. at 85. McLarty then went on to testify that his recollection was that Mrs. Clinton said, "Let's stay after this. This is a serious matter." McLarty GJ 7/31/96 at 85.

⁶⁵¹ Id. at 87.

⁶⁵² Id.

Travel Office matter.⁶⁵³ McLarty agreed that Mrs. Clinton had "input," but disputed that Mrs. Clinton had a "role" in the decision making process which lead to the Travel Office firings:

Q: Now, would it be a fair characterization that based on now the two conversations you had with Mrs. Clinton, she has had input into your decision making process?

A: Well, "input" is your word. Input, in the sense that this is a serious matter, should be taken seriously, and that we should move forward with a decision. I think input in that sense. That's your word.

Q: But what other description of the word "input" would there be?

A: Well, input in terms of the decision making, I think, relates to what specifically -- what are your specific alternatives.

Q: Well, when you were considering alternatives, was part of what was on your mind your discussions with the First Lady about the magnitude of the seriousness of this matter?

A: I think anytime a principal in any organization in the White House raises an issue, it takes on a priority. But that -- that was one element, but not the only element.

Q: Well, you characterize Mrs. Clinton as a principal in the White House. What does that mean? She wasn't elected to anything.

A: No, generally our characterization is the President, The Vice President, the First Lady, Mrs. Gore. It's a senior person in an organization.

Q: And so you considered the First Lady to be a senior person in an organization.

A: I did.

Q: I mean, Mrs. Clinton, in the organization of the White House, was more than just the wife of the President.

A: Well, again, just the way that it's commonly referred to and viewed in this administration, and I believe other administrations. I don't know whether the word "principal" has been used, but that is the terminology for the President, the Vice President, Mrs. Clinton, and Mrs. Gore.

⁶⁵³ Id. at 91.

- Q: Well, if Mrs. Clinton tells you to do something as chief of staff, do you do it? Presuming it's legal. . . .
- A: No, I wouldn't necessarily immediately do it. If she raised a matter with me, or if the Vice President did, I certainly would -- and, certainly, if the President did or Mrs. Gore did -- I would take it seriously, and I would take some action on it, or I would follow-up , or I would look into it.
- Q: You would consider the input from Mrs. Clinton in your decision making.
- A: Well, I would consider the matter raised, yes. If you want to use "input," again, I --
- Q: Well, I'm asking you if you want to use another word, that would be fine, if you can come up with another word to describe what happened.
- A: Well, again, the First Lady had raised this as a serious issue . . . and when I reported to her about the Peat Marwick findings, or what they seemed to be concluding, her response was, "This is a serious matter. Let's stay after it."
- Q: "And we need to proceed to a decision."
- A: And that's how I took it. I mean, I took it just the way she said it, and I -- again, if you want to -- I don't think I quarrel with "input" into this, but input into -- that we should -- we should now make a decision on this matter. What are the next steps to be taken?
- Q: Well, let's talk about -- let's use the word "role." Did she have a role in the process, based on the fact that she had talked to you about this twice and expressed her serious concern about these problems?
- A: I've already testified that her concern about this was an element in the process or -- yes, I think that's fair.
- Q: So did she have a role in the process? Is that a fair characterization?
- A: Well, I think, again, a "role" implies an active participatory role in the discussion and decision of whether or not to use Peat Marwick. To the best of my knowledge, she had no role in that. How that audit or review was going to be done, to the best of my knowledge, she had no role in that. A discussion or a role in how these matters were going to be handled, to

the best of my knowledge, she had no role in that. So I'm just reluctant to accept that characterization. I'm not trying to be argumentative.⁶⁵⁴

McLarty's May 16 conversation with Mrs. Clinton was first disclosed in a chronology of the Travel Office matter prepared at the White House on or about May 25, 1993 that was produced to the OIC and the House Committee on April 16, 1996, in response to subpoenas.⁶⁵⁵ On McLarty's copy of the chronology he wrote, "May 16th HRC pressure."⁶⁵⁶ McLarty discussed the significance of this handwritten note,⁶⁵⁷ as follows:

I can't say with certainty, but I think it reflects either what someone said in the meeting, [on May 25]⁶⁵⁸ as I have made other notations, or it may have triggered my memory about the May 16th conversation that we had discussed previously, that I felt a pressure from the First Lady to make a decision, and I felt a pressure, a responsibility on myself to deal with this issue.⁶⁵⁹

McLarty later testified in regard to the notation:

I believe that I felt Mrs. Clinton -- that there was a pressure from a principal -- just like there is in your organization or any organization, when a senior person or a principal raises an issue, wants it resolved, that there is a pressure to act.⁶⁶⁰

⁶⁵⁴ Id. at 88-91.

⁶⁵⁵ GJ 95-2 Exh. 145.

⁶⁵⁶ McLarty GJ 7/31/96 at 147 (reading GJ 95-2 Exh. 145).

⁶⁵⁷ GJ 95-2 Exh. 145.

⁶⁵⁸ McLarty GJ 7/31/96 at 143. McLarty described the meeting as, "a chronology . . . or a beginning of a chronology that would provide at least the beginning of a management review." Id. at 147. According to McLarty, other participants in this meeting included Stephanopoulos, Gearan, Lindsey, Nussbaum, and Myers. Id. at 134.

⁶⁵⁹ Id. at 147.

⁶⁶⁰ Id. at 151.

b. Evidence of Another Possible Phone Conversation Between Mrs. Clinton and David Watkins Was Unsubstantiated.

Beginning in February 1999, the OIC investigated information that David Watkins and Mrs. Clinton had a second telephone conversation regarding the Travel Office matter on Sunday, May 16, 1993. After investigating the matter, this Office has concluded that the information was unsubstantiated, and that the weight of the evidence establishes that the sole telephone conversation between Mrs. Clinton and Watkins occurred on Friday, May 14, as both previously stated under oath.

While Watkins was away from Washington, D.C. to attend his daughter's graduation during the weekend of May 14 - 16, he played golf with a friend, William Charles Cloud, in Little Rock, Arkansas.⁶⁶¹ Cloud said that Watkins was on the "phone constantly" on Friday, placing and receiving calls on his cell phone from the course and from the golf course office.⁶⁶² Cloud said that on Sunday, May 16, he and David Watkins were playing golf at Pleasant Valley Country Club in Little Rock, Arkansas.⁶⁶³ Cloud said that while they were playing the 16th hole, Watkins either placed or received a cell phone call, and "was talking to Hillary Clinton and that's when they made the decision to terminate them."⁶⁶⁴ Cloud did not actually hear both parties on the phone, but when Watkins hung up, Cloud said to Watkins, "What did she say," and Watkins

⁶⁶¹ Cloud Depo. 6/4/99 at 15; Watkins GJ 2/28/95 at 52 (stating that part of the reason for his trip was to attend his daughter's graduation in Memphis).

⁶⁶² Cloud Depo. 6/4/99 at 15. This activity for Friday, May 14 was corroborated by telephone records. See infra.

⁶⁶³ Cloud Depo. 6/4/99 at 17-18.

⁶⁶⁴ Id. at 18.

replied, "Fire the sons of bitches."⁶⁶⁵ Cloud said they finished their round and had a drink, and "he told me that he was going to go back to Washington that day and do this on Monday, the 17th."⁶⁶⁶

Cloud's recollection of this phone call conflicts with Watkins's recollection. According to Cloud, on May 24, 1999, just prior to Cloud's grand jury testimony, he telephoned Watkins to tell Watkins what Cloud was going to say.⁶⁶⁷ Cloud recounts that he said, "Well, David, you know how I recall things and how they happened and then he said, 'Well, I remember that I had talked to Hillary Clinton in a fellow named [Tourmey's] office at Chenal Country Club [where Watkins and Cloud played golf on Friday May 14], and that's when she gave me the instructions to fire the people."⁶⁶⁸ Cloud said he responded, "'Well, David, that's just not so. It isn't the case If that's the way it happened, David, then I'm wrong because I never was in Jim [Tourmey's] office."⁶⁶⁹

Cloud's recollection is partially corroborated by the recollections of two of his friends, Thomas and Anna Patton. Four years later, Watkins, Cloud, and two of Cloud's friends, Thomas Patton and John Haley, played golf together on July 1, 1997, and Cloud asked Watkins to repeat the story for his friends.⁶⁷⁰ Patton said he and Watkins were sharing a golf cart, and Watkins described the phone conversation saying "that she just said fire them. She didn't say fire the

⁶⁶⁵ Id. at 19.

⁶⁶⁶ Id. at 20.

⁶⁶⁷ Id. at 6.

⁶⁶⁸ Id. at 9.

⁶⁶⁹ Id. at 24.

⁶⁷⁰ T. Patton Depo. 6/16/99 at 5, 7.

SOBs. She didn't use the bad language."⁶⁷¹ Patton then invited the foursome to his "house because I knew that my wife . . . was interested in those kinds of things since, you know, we both were interested in politics We went to our house and sat outside and -- with my wife. And she prepared some snacks. We had cocktails and visited for probably an hour, maybe even a little longer."⁶⁷²

Mr. Patton explained that "the purpose of me inviting Mr. Watkins to the house was I wanted my wife to hear all the kind of gossip or inside stuff, the real stuff, from David because he was quite interesting, and he had a lot of stories to tell I said, tell the, tell the phone conversation story with Mrs. Clinton. And he proceeded to do so, and ended it the same way, that the final conversation was to, to fire them."⁶⁷³ Cloud said, "David told it exactly the way it happened then at the bitter end I kind of jumped in and I said, 'Well, these are really good friends of mine, David, you know. What she really said was -- she said, 'Fire the sons of bitches,' and he said, 'No, no, no, Charlie. She didn't say that. Those were my words.'"⁶⁷⁴

Anna Patton recalled Cloud telling them that during the call "Watkins's cell phone [] battery went dead" and "they ended up on the phone with Charlie Cloud's cell phone, since Charlie was playing golf with Mr. Watkins that day" and "Hillary said to Mr. Watkins . . . fire their asses."⁶⁷⁵ Mrs. Patton said that Cloud said Watkins described Mrs. Clinton as "very upset,

⁶⁷¹ T. Patton Depo. 6/16/99 at 7; see also Cloud Depo. 6/4/99 at 23 (confirming same).

⁶⁷² T. Patton Depo. 6/16/99 at 8.

⁶⁷³ Id. at 9.

⁶⁷⁴ Cloud Depo. 6/4/99 at 23.

⁶⁷⁵ A. Patton Depo. 6/16/99 at 6; see also id. at 5-6 ("I believe the actual call in which Hillary said to Mr. Watkins -- excuse my language -- fire their asses, that that particular phone call was on Charlie Cloud's cell phone"). This was not corroborated by phone records. When

angry, livid."⁶⁷⁶ Mr. Patton said that Cloud remembered Watkins saying, "She said fire the SOBs."⁶⁷⁷

In an effort to determine whether this Sunday, May 16 telephone conversation occurred as reported by Cloud, this Office subpoenaed and received records relating to cell phone calls for David Watkins's cell phone, Cloud's cell phone, White House phone records, and phone records for the two country clubs used by Watkins and Cloud to play golf the weekend of May 14 -16. These telephone records bore out Watkins, and didnot corroborate Cloud's account.⁶⁷⁸

Watkins left the White House for Little Rock in the late afternoon on Thursday, May 13.⁶⁷⁹ Watkins called the White House from the Excelsior Hotel in Little Rock where he was staying and spoke with Foster for 20.2 minutes at 10:41 p.m., during which Watkins said Foster

Cloud was initially interviewed by the FBI, he told the FBI that "WATKINS ran down the batteries in both of their cellular telephones." Cloud FBI Int. 2/12/99 at 1. When Cloud was then shown Cloud's cell phone bills that contained no calls to Washington, D.C., and no calls by either Watkins or Cloud on cell phones to Washington, D.C. on Sunday, May 16, "CLOUD said that in telling and retelling the story to friends about WATKINS running down the batteries in both phones, he may have embellished the story to include two phones when it was only one, and on two different days when it was only one day." Cloud FBI Int. 6/1/99 at 2 (capitalization in original).

⁶⁷⁶ A. Patton Depo. 6/16/99 at 6.

⁶⁷⁷ T. Patton Depo. 6/16/99 at 4.

⁶⁷⁸ Cloud was given a chance to review these records. After doing so he reiterated his testimony that he witnessed a phone conversation on Sunday, May 16 between David Watkins and Hillary Clinton on Watkins's cell phone at the Pleasant Valley Country. He denied witnessing a conversation between Watkins and Mrs. Clinton on Friday, May 14 using a regular phone at the Chenal Country Club. Cloud Depo. 6/4/99 at 24; Cloud Int. 6/4/99 at 2.

⁶⁷⁹ April 22, 1993 Memorandum from Cornelius to Fan Dozier of World Wide Travel Services requesting flights for David and Ileene Watkins for 5/13 and 5/16/93, OIC Bates No. 542-DC-00023560; Thomasson House Depo. 4/22/96 at 92.

advised that Mrs. Clinton wanted the Travel Office employees "out by the end of the day."⁶⁸⁰

Watkins spoke from the Excelsior with Harry Thomason, who was at the Jefferson Hotel in Washington, D.C., for 3.1 minutes at 11:05 p.m.⁶⁸¹

On Friday, May 14, as his staff prepared for the Peat Marwick review, records show that Watkins telephoned his office from the Excelsior at 7:17 a.m., and spoke for 6.2 minutes.⁶⁸² Watkins phoned again at 7:28 a.m., and spoke for .8 minutes.⁶⁸³ Watkins and Cloud began their golf outing at the Chenal Country Club in Little Rock at approximately 8:00 a.m.,⁶⁸⁴ about the same time that Patsy Thomasson escorted Larry Herman and the Peat Marwick representatives to Billy Dale's office to begin their review.⁶⁸⁵ Watkins used his cell phone to call his office at 9:00

⁶⁸⁰ Watkins FBI Int. 1/15/96 at 6, 9; Sprint telephone records for long distance calls placed from Excelsior Hotel, Little Rock, Arkansas May 1993, OIC Bates No. 1685-DC-00000028; Guest ledgers and records for David and Ileene Watkins from the Excelsior Hotel 5/13-15/93, OIC Bates No. 1671-DC-00000034.

⁶⁸¹ Sprint telephone records for long distance calls placed from Excelsior Hotel, Little Rock, Arkansas May 1993, OIC Bates No. 1685-DC-00000028; July 23, 1999 letter from the Jefferson Hotel confirming Harry Thomason was a guest of the Hotel on the days of and including May 13 through May 15, 1993, OIC Bates No. 1708-DC-00000001; Guest ledgers and records for David and Ileene Watkins from the Excelsior Hotel 5/13-15/93, OIC Bates No. 1671-DC-00000034.

⁶⁸² Sprint telephone records for long distance calls placed from Excelsior Hotel, Little Rock, Arkansas May 1993, OIC Bates No. 1685-DC-00000028; Guest ledgers and records for David and Ileene Watkins from the Excelsior Hotel 5/13-15/93, OIC Bates No. 1671-DC-00000058.

⁶⁸³ Sprint telephone records for long distance calls placed from Excelsior Hotel, Little Rock, Arkansas May 1993, OIC Bates No. 1685-DC-00000028; Guest ledgers and records for David and Ileene Watkins from the Excelsior Hotel 5/13-15/93, OIC Bates Nos. 1671-DC-00000035, 058.

⁶⁸⁴ Cloud Int. 4/13/99 at 4.

⁶⁸⁵ Thomasson House Depo. 4/22/96 at 95.

a.m., and spoke for 6.0 minutes.⁶⁸⁶ At 9:51 a.m., Watkins called Foster's office on his cell phone and spoke for 6.0 minutes.⁶⁸⁷ Watkins next used his cell phone for a series of short calls to his office at 11:55 a.m. (6.0 minutes), 12:46 p.m. (2.0 minutes), 2:42 p.m. (4.0 minutes), 3:30 p.m. (9.0 minutes).⁶⁸⁸ At 3:41 p.m., Watkins used his cell phone to call the White House switchboard for 1.0 minute.⁶⁸⁹

The one telephone conversation between David Watkins and Mrs. Clinton that did occur took place in the next sequence of calls. At 3:48 p.m., Watkins moved from his cell phone to a Chenal Country Club phone and again called the White House switchboard, where he spoke for 18.5 minutes to Vince Foster.⁶⁹⁰ Almost as soon as this conversation ended, at 4:10 p.m. Watkins

⁶⁸⁶ Bell Atlantic customer account information and toll records for the cellular telephone assigned to Patsy Thomasson and used by David Watkins for the billing periods ending May, June, and July 1993, OIC Bates No. 1701-DC-00000009. Thomasson FBI Int. 10/15/99 at 5 (stating that the cellular telephone assigned to her was used exclusively by David Watkins during the entire month of May 1993).

⁶⁸⁷ Bell Atlantic customer account information and toll records for the cellular telephone assigned to Patsy Thomasson and used by David Watkins for the billing periods ending May, June, and July 1993, OIC Bates No. 1701-DC-00000009. Thomasson FBI Int. 10/15/99 at 5 (stating that the cellular telephone assigned to her was used exclusively by David Watkins during the entire month of May 1993).

⁶⁸⁸ Bell Atlantic customer account information and toll records for the cellular telephone assigned to Patsy Thomasson and used by David Watkins for the billing periods ending May, June, and July 1993, OIC Bates No. 1701-DC-00000009-010. Thomasson FBI Int. 10/15/99 at 5 (stating that the cellular telephone assigned to her was used exclusively by David Watkins during the entire month of May 1993).

⁶⁸⁹ Bell Atlantic customer account information and toll records for the cellular telephone assigned to Patsy Thomasson and used by David Watkins for the billing periods ending May, June, and July 1993, OIC Bates No. 1701-DC-00000010. Thomasson FBI Int. 10/15/99 at 5 (stating that the cellular telephone assigned to her was used exclusively by David Watkins, during the entire month of May 1993).

⁶⁹⁰ Watkins FBI Int. 6/22/94, OIC Bates No. AJ-DC-00002039 at 2040; G. Stewart Int. 5/6/99 at 1.

placed a call from the Chenal Country Club line to the White House switchboard that lasted 3.75 minutes.⁶⁹¹ As soon as that call ended at 4:14 p.m., Watkins called from the Club phone to the telephone number for Pamela Cicetti, Mrs. Clinton's secretary, and spoke for 6.25 minutes.⁶⁹² Ms. Cicetti evidently transferred Watkins to Mrs. Clinton, and they had the conversation that both agreed occurred. At 4:43 p.m., Watkins called from the Club to his office and spoke for 5.5 minutes.⁶⁹³ Immediately after that call, Watkins phoned Mark Gearan at 4:49 p.m., and spoke for 2.0 minutes.⁶⁹⁴ This is the final phone call by Watkins shown to have occurred by phone records.⁶⁹⁵ Phone records do not reflect any conversations between Watkins and the White

⁶⁹¹ Chenal Country Club telephone records, receipts, and other records for the period of May 1993 referring or relating to David and Ileene Watkins, OIC Bates No. 1672-DC-00000030. The records show that Watkins spoke with Foster from 3:48 p.m. to 4:09 p.m., and then telephoned the White House switchboard at 4:10 p.m. This is consistent with Watkins's testimony and statements during interviews with this Office that Foster initially tried to transfer Watkins to Mrs. Clinton, Watkins was cut off, and then had to call back through the switchboard, who initially did not want to connect him to the First Lady because she was getting ready for a social engagement. Watkins GJ 2/28/95 at 53.

⁶⁹² Chenal Country Club telephone records, receipts, and other records for the period of May 1993 referring or relating to David and Ileene Watkins, OIC Bates No. 1672-DC-00000030; see also Watkins GAO Int. 12/9/93, OIC Bates No. AJ-DC-00002049 at 2066 (transcribed by GAO investigator Bob Homan 12/10/93); Watkins FBI Int. 8/10/93 at 4-5; Watkins FBI Int. 9/30/93 at 3-4.

⁶⁹³ Chenal Country Club telephone records, receipts, and other records for the period of May 1993 referring or relating to David and Ileene Watkins, OIC Bates No. 1672-DC-00000030.

⁶⁹⁴ Id.

⁶⁹⁵ Telephone records from Chenal Club reflect a call to Mark Gearan at 4:49 p.m. as the last known recorded phone call. Chenal Country Club telephone records, receipts, and other records for the period of May 1993 referring or relating to David and Ileene Watkins, OIC Bates No. 1672-DC-00000030. Patsy Thomasson states that she telephoned Watkins sometime between 8:45 and 11 p.m. to "urge" Watkins to telephone Harry Thomason at the Jefferson Hotel in Washington. Although the Office found no records of this call, Watkins says that he telephoned Harry Thomason late that night. Watkins Int. 11/22/96 at 25.

House on Saturday, May 15, although Watkins said that he spoke to Patsy Thomasson four or five times throughout the day.⁶⁹⁶

At 8:00 a.m. on Sunday, May 16, Watkins and Cloud began their golf round at the Pleasant Valley Country Club in Little Rock.⁶⁹⁷ The only conversation corroborated by phone records to have occurred on this date shows Watkins calling Patsy Thomasson at the White House on his cell phone at 10:38 a.m., and speaking for 2.0 minutes.⁶⁹⁸

On June 13, 2000, Watkins was interviewed by the OIC regarding Cloud's allegation of the telephone call with Mrs. Clinton on May 16. The report of interview reflects that:

WATKINS speculated that he may have been talking to PATSY THOMASSON and may have told CLOUD, in profane terms, that he, WATKINS, had decided to fire [the Travel Office employees]. THOMASSON had called several times that day to advise WATKINS on the audit team findings that there were problems with the [Travel Office] financial procedures. This may have caused WATKINS to decide on the spot to fire the staff and to tell CLOUD that he was going to do so.⁶⁹⁹

After fully investigating the alleged Sunday, May 16 telephone conversation between Watkins and Mrs. Clinton, this Office has determined that other than Mr. Cloud's testimony, there is no evidence to corroborate that such a conversation actually occurred. The cell phone

⁶⁹⁶ Watkins FBI Int. 9/30/93 at 3-4.

⁶⁹⁷ Pleasant Valley Country Club telephone records, receipts, and other records for the period of May 1993 referring or relating to David and Ileen Watkins, OIC Bates No. 1680-DC-00000002; Cloud Int. 2/12/99 at 2; Cloud Int. 5/28/99 at 5; Cloud Int. 6/4/99 at 1-2; Cloud Int. 4/13/99 at 8; Cloud Depo. 6/4/99 at 17-19; M. Patton Int. 4/14/99 at 1-2; A. Patton Int. 4/14/99 at 1-2. OIC Bates No. 1672-DC-00000030.

⁶⁹⁸ Bell Atlantic customer account information and toll records for the cellular telephone assigned to Patsy Thomasson and used by David Watkins for the billing periods ending May, June, and July 1993, OIC Bates No. 1701-DC-00000010. Thomasson FBI Int. 10/15/99 at 5 (stating that the cellular telephone assigned to her was used exclusively by David Watkins during the entire month of May 1993).

⁶⁹⁹ Watkins Int. 6/13/00 at 5 (capitalization in original).

billing records do not reflect that David Watkins used his own cell phone so much during the weekend that Watkins needed to use Cloud's phone. Watkins and Cloud disagree not only on the language allegedly used by Mrs. Clinton in discussing the firings with Watkins, but also on where the actual discussion occurred: Cloud claimed that the discussion took place on May 16 from a cell phone while Watkins claimed that the discussion took place in Jim Tourmey's office on May 14 using a land line. Furthermore, while the Office has no question that Cloud intended to be fully truthful and cooperative in relating this information to this Office, Cloud also clearly has enjoyed retelling this story over the years in social settings.⁷⁰⁰ Therefore, absent any corroborating evidence, we conclude that the balance of proof does not support Cloud's assertion -- certainly not to the extent necessary to provide proof beyond a reasonable doubt.

7. Monday, May 17, 1993.

Early in the morning on Monday, May 17, 1993, David Watkins advised McLarty and Foster of his decision to fire the Travel Office employees. Later that day, Peat Marwick presented its first written report, confirming its oral findings of fiscal irregularity in the Travel Office. Late in the day, after speaking with two colleagues, Dale met with Watkins and advised Watkins of his intention to retire in June. Watkins told Dale that his request could wait.

⁷⁰⁰ Cloud Depo. 6/4/99 at 23; A. Patton Depo. 6/16/99 at 4-7; T. Patton Depo. 6/16/99 at 15.

a. Watkins Decided to Fire the Travel Office Employees.

Watkins reported the substance of his Friday, May 14 telephone conversation with Mrs. Clinton to Vince Foster and Chief of Staff McLarty the following Monday, May 17.⁷⁰¹ On Monday morning, McLarty, Patsy Thomasson, and Watkins met in Watkins's office.⁷⁰² Watkins testified that McLarty "said something like, 'Well, I had dinner with the President and Mrs. Clinton last night, and it was certainly on her antennae or on her wave length or something.'"⁷⁰³

Watkins informed McLarty that he had decided to fire all seven Travel Office employees.⁷⁰⁴ Watkins instructed his assistant Jennifer O'Connor to prepare a memorandum to McLarty for Watkins's signature recommending the employees be terminated.⁷⁰⁵ David Watkins hand delivered the memorandum to McLarty on Monday afternoon.⁷⁰⁶ Jennifer O'Connor of Watkins's staff,⁷⁰⁷ who actually drafted the memorandum for Watkins's signature, sent a copy to

⁷⁰¹ Watkins GJ 2/28/95 at 57. McLarty said that he was aware at this point that Foster also had been briefing Mrs. Clinton on the Peat Marwick review. McLarty GJ 7/31/96 at 63-64.

⁷⁰² Thomasson GJ 7/24/96 at 68.

⁷⁰³ Watkins GJ 2/28/95 at 56. McLarty did not recall if he recounted his May 16 conversation with Mrs. Clinton to Watkins when he and Watkins met on the morning of May 17. McLarty GJ 7/31/96 at 160.

⁷⁰⁴ McLarty GJ 7/31/96 at 117-19. McLarty said he was "relieved" upon learning Watkins had made this decision, because it "was a difficult matter that needed to be dealt with promptly." Id. at 61.

⁷⁰⁵ Watkins GJ 2/28/95 at 55-57; O'Connor GJ 6/20/96 at 54-57; GJ 95-2 Exh. 432.

⁷⁰⁶ McLarty GJ 7/31/96 at 127.

⁷⁰⁷ O'Connor GJ 6/20/96 at 54-57. O'Connor testified that she questioned whether all the employees should be fired if only two handled the relevant transactions. Regarding the response to her question, she stated, "I don't remember who said what, but the way the answer ended [up] being articulated was, because all of them had done basically all the different tasks in the office,

Mrs. Clinton.⁷⁰⁸ O'Connor testified that Watkins told her to copy the memorandum to Mrs. Clinton, something she and Watkins had never done before.⁷⁰⁹ Watkins said he copied Mrs. Clinton on the memorandum so she would know what he was doing because he felt like the course outlined in the memorandum was what she wanted done.⁷¹⁰

When asked by this Office who made the decision to fire the Travel Office employees, Mrs. Clinton testified as follows:

Q: Who ultimately made the decision, to the extent that you know, to fire the employees from the Travel Office?

they were all responsible for the mismanagement in the office." Id. at 3.

⁷⁰⁸ Mrs. Clinton said that she never read the memorandum. Mrs. Clinton's written responses to GAO's written questions 4/6/94, OIC Bates No. AJ-DC-00001520. Maggie Williams, Mrs. Clinton's Chief of Staff, testified that on the Saturday after the firings, Mrs. Clinton discovered the memorandum while going through her own in box, and Mrs. Clinton said "something to the effect of, 'We don't have to worry about this.'" M. Williams GJ 7/30/96 at 22. Williams said that she does not know whether Mrs. Clinton read the memorandum, but looked at it long enough to tell Williams she could throw it in the trash, which Williams did. See Williams GJ 7/30/96 at 17-24. Lisa Caputo, then Press Secretary to Mrs. Clinton, testified that she prepared talking points in anticipation of the White House Travel Office Management Review's release. See Talking points from Lisa Caputo to Mark Gearan 7/2/93, OIC Bates No. 542-DC-00030754 and Talking point on Travel Office Report undated, OIC Bates No. 542-DC-00030770. She stated that Maggie Williams provided all the information contained in the talking points, including reference to the memorandum being copied to Mrs. Clinton, "All I know about this memo is that David Watkins wrote the memo, cc'd Mrs. Clinton on it, Mrs. Clinton passed it on to Maggie Williams as an FYI." Caputo GJ 7/31/96 at 16-17.

⁷⁰⁹ O'Connor GJ 6/20/96 at 57. O'Connor's notes indicate in pertinent part, "tlkg pts -- Mack/HRC tlkg pts - Tues for firing." O'Connor's notes undated, OIC Bates No. 542-DC-00024431 (emphasis in original). O'Connor explained that the notes mean she was supposed to give talking points -- ultimately the memo -- to McLarty and the First Lady. O'Connor GJ 6/20/96 at 66. McLarty testified that he believed he had his office notify the First Lady's office that the firings were going to occur, but could not say so with a certainty. McLarty GJ 7/31/96 at 197.

⁷¹⁰ Watkins Int. 11/22/96 at 26.

A: Well, the best I know is David Watkins and Mack McLarty, I assume, based on what I have learned since and read in the newspapers.⁷¹¹

Q: Did you have any role in it?

A: No, I did not.

Q: Did you have any input with either Mr. McLarty or Mr. Watkins as to that decision?

A: I don't believe I did, no.⁷¹²

Watkins also met with Larry Herman on May 17 for about a half hour, and Herman told him "we had found a series of checks in which the same individual had written the check to himself, signed it himself, endorsed it himself, [and] deposited it in an account which did not appear to be a White House account."⁷¹³ Kennedy's notes and testimony state that Watkins,

⁷¹¹ Watkins testified that Thomason had told him that Mrs. Clinton wanted the Travel Office employees fired, but when asked whether Mrs. Clinton was "in a position to direct . . . that people . . . should be fired," Watkins said, "Well, Mrs. Clinton did not work for -- obviously, did not work in the administration, but she had influence." Watkins GJ 2/28/95 at 51-52. Watkins said he made the decision to notify the employees they were going to be fired on Monday, May 17, that he communicated that decision to McLarty when McLarty came into his office for an update that morning, and that McLarty "concurred and agreed" with Watkins's decision "to proceed." *Id.* at 5-56. McLarty's testimony was consistent with Watkins's. McLarty GJ 7/31/96 at 119, 138-39.

Patsy Thomasson, who consulted with Watkins about his decision the morning of May 17, agreed with Watkins's rendition. Thomasson 6/24/96 at 69-74, 203-204. Thomasson said in her 1995 testimony that Watkins arrived back from his weekend away on May 17, "convinced they need[ed] to go," and that he then "goes off and talks to other people" before "the action took place." *Id.* at 12-13, 17. Dee Dee Myers testified that Watkins made the firing decision "in consultation with a number of other people, including Mr. Nussbaum, Mr. Foster, people like that," and that "probably Mack McLarty" and the First Lady were "informed about it" and "concurred." Myers GJ 7/23/96 at 85-86.

⁷¹² H. Clinton Depo. 7/22/95 at 12. The questioning then moved on to subjects that did not elicit additional testimony from Mrs. Clinton on the Travel Office firings. *See id.* at 13-67.

⁷¹³ Herman GJ 6/20/96 at 46-47, 68.

O'Connor, Thomasson, Herman, Kennedy, and Jack Miller,⁷¹⁴ attended this meeting, and that it most likely occurred after the meeting with McLarty.⁷¹⁵

b. Peat Marwick Presented Kennedy With a Draft of its Written Report Regarding Irregularities in Handling Petty Cash.

On Sunday, May 16, 1993, KPMG Peat Marwick presented Kennedy with a "report summarizing the observations and findings resulting from our procedures relating to the White House Office of Travel and Telegraph's . . . management, systems, policies, and procedures," stressing that "[o]ur procedures do not constitute an audit, examination, or review in accordance with standards established by the American Institute of Certified Public Accountants and, therefore, we do not express an opinion or any other form of assurance on the information presented in our report."⁷¹⁶

The Peat Marwick written report confirmed that Travel Office petty cash was handled in a highly irregular manner. The Report stated that the auditors found "discrepancies between the amount written to 'cash' . . . and the recording of these amounts."⁷¹⁷ These findings were consistent with Peat Marwick Auditor Dan Russell's Friday, May 14 discovery of the

⁷¹⁴ Mr. Miller was not a federal government employee. Jennifer O'Connor testified that she thought Mr. Miller was an attorney from New York working for Peat Marwick, who attended meetings with Larry Herman. O'Connor GJ 6/28/96 at 52; O'Connor House Depo. 3/29/96 at 104.

⁷¹⁵ Kennedy GJ 7/30/96 at 90, 94; Kennedy's notes 5/17/93, OIC Bates No. 542-DC-00001489.

⁷¹⁶ Letter Report from KPMG Peat Marwick to William H. Kennedy, III, Assoc. Counsel to the President 5/17/93, OIC Bates No. AJ-DC-00000152, reprinted at White House Travel Office -- Day Three: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 57 (1996); Herman GJ 6/20/96 at 23.

⁷¹⁷ Letter Report from KPMG Peat Marwick to William H. Kennedy, III, Assoc. Counsel to the President 5/17/93, OIC Bates No. AJ-DC-00000152 at 156.

unaccounted for \$5,000 check that Dale had cashed, which Dale could not account for based on the petty cash ledger Dale had given to Russell.⁷¹⁸

c. Billy Dale Was Upset With the Sudden Focus on the Travel Office, Consulted With Watkins's Assistant Janet Green, and Then Told Watkins He Wanted to Retire.

When the Peat Marwick review was finished for the evening on Friday at around 10:00 p.m., Dale offered to stay and lock up, but was informed by Patsy Thomasson that GSA was changing the locks and Thomasson would have the key.⁷¹⁹ Dale concluded that all this meant "our tenure in the Travel Office was limited."⁷²⁰ Billy Dale testified before the grand jury that on Monday, May 17, 1993, he met with Alex G. Nagy,⁷²¹ Director of White House Telephone Service, and Janet Green, then assistant to David Watkins, in Mr. Nagy's office.⁷²² Dale was upset by finding that the Travel Office locks had been changed over the weekend, and he wanted

⁷¹⁸ Letter Report from KPMG Peat Marwick to William H. Kennedy, III, Assoc. Counsel to the President 5/17/93, OIC Bates No. AJ-DC-00000152, reprinted at White House Travel Office -- Day Three: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 57 (1996). KPMG Peat Marwick's report also noted "[o]ne disbursement to Pan Am Express on December 20, 1991 [that] did not have a related invoice. The Director of the press travel office [Billy Dale] informed us that the payment was based on an oral price quote from the charter company. The dollar amount of this disbursement was \$12,841.56." Letter from KPMG Peat Marwick to William H. Kennedy, III, Assoc. Counsel to the President (May 17, 1993), reprinted at White House Travel Office -- Day Three: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 60 (1996).

⁷¹⁹ Dale GJ 7/9/96 at 122. When Dale came into the office the next morning (Saturday), he had to call Thomasson from the hall and sit until she came in and unlocked the office for him. Id.

⁷²⁰ Id.

⁷²¹ Mr. Nagy first came to work at the White House in 1973, and has known Billy Dale since that time. Nagy Int. 2/24/00 at 1. Thus, like Mr. Dale, Mr. Nagy was a career White House employee who had served six presidents from both parties.

⁷²² Dale GJ 7/9/96 at 118-21.

to meet with Green and Nagy to discuss his status.⁷²³ Because of the manner in which Peat Marwick had conducted its review, and in particular the pointed questions about the \$5,000 check to cash, Dale concluded that the seemingly innocuous "review" was really an investigation and that "the whole office was suspect."⁷²⁴

Dale went to Nagy's office and asked Nagy for his opinion of Janet Green, and when Nagy gave a favorable view of her, Dale asked Nagy if he could arrange for Green to come and meet with them in Nagy's office.⁷²⁵ Dale said that he thought of Green as "the only friend" he had among those who came in with the new administration, and Dale thought Nagy could inconspicuously arrange the meeting because Nagy, like Dale, reported to Green and Watkins.⁷²⁶ Nagy immediately telephoned Green, and asked her if she might come to his office; she did so within a few minutes.⁷²⁷

Dale said that his meeting with Green and Nagy lasted for about an hour.⁷²⁸ Nagy offered to leave so that Dale and Green could speak privately, but Dale asked Nagy to stay.⁷²⁹ Dale discussed everything that had been bothering him about the Peat Marwick review, his concerns relating to Cornelius, and the missing cash ledgers. After absorbing what Dale said, as Dale

⁷²³ Id. at 120.

⁷²⁴ Id. at 121.

⁷²⁵ Nagy Int. 2/24/00 at 1.

⁷²⁶ Dale GJ 7/9/96 at 120.

⁷²⁷ Nagy Int. 2/24/00 at 1.

⁷²⁸ Dale GJ 7/9/96 at 122-23. Nagy thought the meeting took place sometime before noon, and lasted for no more than 30 minutes. Nagy Int. 2/24/00 at 2.

⁷²⁹ Dale GJ 7/9/96 at 123, 126; Nagy Int. 2/24/00 at 2.

testified, Green "looked at [him] and she said, 'Billy, I'm going to tell you something, and if you ever repeat this or tell anybody, I'll deny it.'"⁷³⁰ But there is one person and one person only responsible for what happened in your office over this weekend and he occupies the oval office. Now do I need to mention any names?"⁷³¹ Dale did not ask her to name the name, or anything else about where Green got her information.⁷³²

On the evening of May 17, 1993, Dale met with Watkins⁷³³ at Dale's request. Dale told Watkins he wanted to retire effective June 3. Dale testified that Watkins told him there would be changes in the Travel Office, that Dale's request could wait 24 hours, and that he would like to meet with Dale and his staff the next morning.⁷³⁴

⁷³⁰ When Green testified before the grand jury, she was asked whether she ever had the conversation that Dale described, and she said, "No." Green GJ 7/11/96 at 7. She was then asked: "Did you ever have a conversation anywhere close to that with Mr. Dale at any time," to which she again said, "No." Id. She was even asked the broader question: "Had you ever discussed the Travel Office in any way with Mr. Dale," again resulting in a flat "No." Id. She also denied ever having had such a conversation with the other person Dale placed in the room, Mr. Nagy. Id. at 7-8.

Nagy recalled the meeting occurring as Dale described, with Green telling Dale something like "leave it alone" and "[t]his is coming from the highest possible level," which Nagy understood to refer to the President. Nagy Int. 2/24/00 at 2. A few minutes after his interview with this Office, Nagy telephoned the Office to add that he had also recalled that Green said to Dale, "What I'm going to tell you, if it ever gets out, I will deny it," which Green had then followed with her advice to "leave it alone" because it was "coming from the highest possible level." Id. at 3.

⁷³¹ Dale GJ 7/9/96 at 124-25.

⁷³² Id. at 125-26.

⁷³³ Id. at 126-27.

⁷³⁴ Id. at 127.

8. Tuesday, May 18, 1993.

On May 18, Watkins and his staff prepared for the imminent firing of the Travel Office employees. Meanwhile, presidential aide Bruce Lindsey advised President Clinton that the firing would happen shortly.⁷³⁵

a. Watkins and His Staff Prepared to Fire the Travel Office Employees.

On the afternoon of Tuesday, May 18, 1993, Watkins assembled numerous staff members and others in his office to discuss the firings. Watkins, through Cornelius, arranged for World Wide Travel to come into the White House to handle commercial travel bookings after the firings, which were scheduled for the following day.⁷³⁶ Chris Walton, a friend of Cornelius's who had worked for her on the campaign and was vacationing in Washington at the time, spent that afternoon with Cornelius.⁷³⁷ Walton testified that Cornelius told him about the Travel Office

⁷³⁵ Lindsey GJ 8/1/96 at 45-46. Also on May 18, David Bowie of the FBI's Washington Field Office officially opened an investigation of the Travel Office, that is, he filed the requisite paperwork. Bowie GJ 6/6/96 at 45-47. In his opinion, however, this ministerial act was relatively insignificant as Cornelius's allegations sufficed to justify a full field investigation as early as May 14. Id. at 47.

⁷³⁶ See Cornelius GJ 7/25/96 at 149-50. On May 19, 1993, after the firings, Steve Davison and Fan Dozier, both of World Wide Travel, met with David Watkins, Patsy Thomasson, Catherine Cornelius, her assistant Chris Walton, Brian Foucart, and two men from the Office of Management and Budget in Watkins's office. Davison GJ 6/13/96 at 45-46. Watkins announced that the employees had been fired and that Cornelius and Sample would run the office. Davison GJ 6/13/96 at 47; see also Dozier GJ 6/13/96 at 18 (same). Kelley-Gehrki was displeased about having to go to Washington, "I mean, I felt like I was wasting my staff, which Fan, Angela [Colclasure], all of these agents they were my staff, at my office, I was wasting their time and I was wasting my time unless we got something on paper that we were supposed to be there, and that we were going to get paid for it." Kelley-Gehrki GJ 6/13/96 at 36. Carney testified that she did not know World Wide was not going to be paid until World Wide agents arrived at the Travel Office on May 19, 1993. Carney GJ 6/13/93 at 43-44, 46.

⁷³⁷ Walton GJ 6/6/96 at 12-13.

situation, and asked Walton to "help her out as a support person."⁷³⁸ Walton worked with Cornelius in the Travel Office from Tuesday, May 18, through Friday, May 21.⁷³⁹ He attended Watkins's May 18 staff meeting, and recalled that Steve Davison, Fan Dozier, Cornelius, two people from OMB, and Patsy Thomasson were also present.⁷⁴⁰ During the meeting, Watkins reviewed the Peat Marwick report's findings, and instructed the staff to ensure that the President's upcoming trip to New Hampshire went smoothly.⁷⁴¹

b. The President Was Informed the Firings Would Occur the Following Day.

Bruce Lindsey testified that he had a vague memory that Jeff Eller came to him on May 18, while they were both on a trip with the President to California, and told Lindsey that something was happening in the Travel Office.⁷⁴² Later, Eller showed Lindsey the memorandum prepared by Watkins and copied to Mrs. Clinton, which Watkins had faxed to Eller on Air Force One.⁷⁴³ Eller showed the memorandum to Bruce Lindsey, who read it and then told the President during dinner that evening that "they're going to terminate the seven members . . . of the Travel

⁷³⁸ Id. at 14. Walton testified that Cornelius told him "that there were some problems in the White House Travel Office, that there was some mismanagement of funds, that the FBI was going to come in and take a look at it. And that they were going to release the seven members of the White House Travel Office the very next day." Id. at 14.

⁷³⁹ Id. at 15. Walton was not paid for his services, though Cornelius had told him he would be. Id. at 21, 42.

⁷⁴⁰ Id. at 27.

⁷⁴¹ Id. at 29.

⁷⁴² Lindsey GJ 8/1/96 at 44. Lindsey also testified that he had previously "heard from Harry Thomason that there, that he believed or had heard rumors that there were people in the Travel Office who were taking kickbacks from companies to get business." Id. at 11.

⁷⁴³ Id. at 44-45.

Office tomorrow."⁷⁴⁴ Lindsey said the President asked him, "For what or why?" and Lindsey responded, "they had found that the accounting system was bad, there was unaccounted for cash and whatever was reflected in this memo I sort of said to him."⁷⁴⁵

9. May 19-21, 1993: The Firings and the Immediate Aftermath.

On May 19, 1993, the Travel Office employees finally were dismissed. Because of a miscommunication between the Counsel's Office and the press staff, Dee Dee Myers publicly disclosed that the Travel Office employees were under investigation by the FBI. The press corps's negative reaction to the Travel Office firings led to a series of lengthy meetings among senior White House staff. One of the most significant early press stories was a dispute between Cornelius, Cerda, Watkins, and Thomasson, about whether Watkins had ever read the February 15 memorandum written by Cornelius and Cerda, and whether he was attempting to get Cornelius and Cerda to "cover" for him regarding the memorandum. Tension regarding this memorandum, and Cornelius's handling of the Travel Office became so great that several people suggested she resign.

a. The Travel Office Staff Were Fired.

At 9:00 a.m., Davison, Dozier, Walton, Foucart, Watkins, Thomasson, Cornelius and two OMB representatives met in Watkins's office to review how to run the Travel Office after the employees were fired.⁷⁴⁶ At approximately 10:00 a.m. on May 19, 1993, Watkins and Brian Foucart met with Dale and the Travel Office staff in a conference room in the Old Executive

⁷⁴⁴ Id. at 44-45. Eller testified that he vaguely remembers something coming through the fax from Watkins on the trip to California, but claims not to recall what it was. Eller GJ 7/17/96 at 71.

⁷⁴⁵ Lindsey GJ 8/1/96 at 46.

⁷⁴⁶ Davison GJ 6/13/96 at 45-48.

Office Building.⁷⁴⁷ Watkins told the Travel Office employees that they were being terminated as part of the President's commitment to cut the White House staff by twenty-five percent, and that their duties would be outsourced.⁷⁴⁸ Dale testified that, based on the Peat Marwick audit, he and his staff had already expected that their tenure was limited.⁷⁴⁹ Chris Vein, in the neighboring White House Administrative Office, said the Travel Office employees "opened the door, stuck their head in and said, 'We have been fired. We have 10 minutes.'"⁷⁵⁰ When Dale returned to the Travel Office, he found World Wide already in place. Dale spent the next three hours describing how the computer and billing systems operated. Dale left the White House at approximately 5:00 p.m.⁷⁵¹

b. FBI Involvement Was Publicly Announced Despite an Unsuccessful Attempt by Kennedy and Foster to Prevent Public Disclosure.

Kennedy testified that he first learned of the impending firings on May 19, 1993 from either Watkins or Thomasson, and thought it was a bad idea because the auditors had not yet

⁷⁴⁷ Watkins GAO Int. 12/9/93 at 15-16 (transcribed by GAO Investigator Bob Homan 12/10/99); Watkins GJ 2/28/95 at 55; Foucart House Depo. 5/3/96 at 39-44. The report of Watkins's interview for the White House Management Review reflected that although "Watkins knew that only two of the 7 employees had financial control of the office," he apparently understood that "the employees mostly worked interchangeably." Watkins GAO Int. 12/9/93 at 15 (transcribed by GAO Investigator Bob Homan 12/10/93). Patsy Thomasson also testified that with respect to problems with petty cash, "We knew that they all took petty cash checks, and that there was no record of all those petty cash checks." Thomasson GJ 7/24/96 at 71.

⁷⁴⁸ Dale GJ 7/9/96 at 128-29. O'Connor prepared talking points for the firings which were never used. O'Connor GJ 6/20/96 at 88; see also O'Connor's draft talking points undated, OIC Bates No. 542-DC-00007881.

⁷⁴⁹ Dale GJ 7/9/96 at 129.

⁷⁵⁰ Vein GJ 6/25/96 at 14.

⁷⁵¹ Dale GJ 7/9/96 at 130-31.

finished their work and the FBI was coming on board.⁷⁵² He called to inform the FBI, who had the same reaction and asked if the decision was a firm one.⁷⁵³ Kennedy then spoke to Watkins, who told Kennedy that the decision to fire them had been made; Kennedy testified that he had no idea who made the decision.⁷⁵⁴

Watkins also handed Kennedy talking points someone had drafted.⁷⁵⁵ As Kennedy proceeded to Foster's office, he noticed that the talking points mentioned the FBI investigation "which [he] thought was a very bad idea."⁷⁵⁶ When he stepped off the elevator, he explained, "Vince came barreling out of his office [with] the talking points in his hand," and raised with Kennedy the issue of the FBI reference.⁷⁵⁷ Foster and Kennedy located Watkins and told him "the word should go out to everybody not to talk about [the FBI investigation]," and Watkins said he would take care of it.⁷⁵⁸

Eller conducted a pre-briefing regarding the Travel Office matters with select members of the press on the morning of May 19, 1993.⁷⁵⁹ Dee Dee Myers and the President returned from

⁷⁵² Kennedy GJ 7/30/96 at 91-92.

⁷⁵³ Id. at 93.

⁷⁵⁴ Id. at 91-94. Special Agent Wade testified that sometime prior to May 19, Kennedy told him that the Travel Office employees were going to be terminated, but did not say when. Wade had the impression that it would happen soon. Wade GJ 6/4/96 at 37.

⁷⁵⁵ Kennedy GJ 7/30/96 at 94.

⁷⁵⁶ Id. at 94.

⁷⁵⁷ Id. at 94-95.

⁷⁵⁸ Id. at 95.

⁷⁵⁹ Myers GJ 7/23/96 at 45-48.

Capitol Hill around noon.⁷⁶⁰ Myers had already received the talking points that mentioned the FBI investigation.⁷⁶¹ Shortly thereafter, Myers received a call from the Associated Press's Terry Hunt, and Myers confirmed the Travel Office employees had been dismissed.⁷⁶² Hunt asked if the FBI was reviewing the situation, which Myers confirmed because the FBI's involvement was in the talking points and had been told to her by Watkins.⁷⁶³ Myers then received a call from Watkins who told her not to mention the FBI to the press; Myers indicated it was too late.⁷⁶⁴ Myers called Hunt back to learn that the information had already been run on the wire services as urgent headlines.⁷⁶⁵

At 2:22 p.m. that day, Myers held a press briefing in the White House where she announced the Travel Office employees had been fired and answered questions about the FBI investigation she had already confirmed to the Associated Press.⁷⁶⁶ Myers testified that the White House had "an enormous problem on our hands. That I had disclosed that the FBI was

⁷⁶⁰ Id. at 49.

⁷⁶¹ Id. at 48-49; see also Talking Points on Changes in White House Travel Office 5/13/93, OIC Bates No. 542-DC-00007488.

⁷⁶² Myers GJ 7/23/96 at 49.

⁷⁶³ Id. at 49-50.

⁷⁶⁴ Id. at 50.

⁷⁶⁵ Id. at 52. Martens testified that when he heard about the firings on the radio he called Harry Thomason, who asked him if Sample would volunteer to come to Washington and work with Cornelius for a couple of weeks. Martens and Sample arrived on May 21. Martens GJ 7/16/96 at 114-15. Martens contended that the only reason he returned to Washington on this date was to introduce Sample to Cornelius and Watkins. Id. at 110, 114. Chris Walton, whom Cornelius enlisted to help out in the Travel Office during the week following the firings, testified that he heard discussions that week to the effect that Martens would be chartering the aircraft for the President's upcoming New Hampshire trip. Walton GJ 6/6/96 at 54-55.

⁷⁶⁶ Myers GJ 7/23/96 at 53-56.

investigating Two, we had summarily dismissed several people who had close working relationships with a very angry White House press corps."⁷⁶⁷ Kennedy first learned "the horse was out of the barn" (referring to the disclosure of FBI involvement) when Myers called Kennedy for information because the press was inundating her with questions.⁷⁶⁸ Myers's principal aide, David Leavy, said, "I think it is safe to say that most people had no idea what kind of reaction it would have in the media. I certainly could never have anticipated the overwhelming reaction that the media had to it."⁷⁶⁹

c. The Press Corps Reacted Negatively, Which Generated Substantial Discussion Amongst the White House Staff.

The press's reaction to the firings was openly hostile, and, according to Myers, dominated the White House Press Office for "three days, at least."⁷⁷⁰ Press reports quickly identified Cornelius as the President's relative and began to explore the relationship between World Wide and the Clinton campaign.⁷⁷¹ The press also began exploring Sample's relationship with Martens and Thomason and the Clinton campaign. Specifically, Martens testified that his confidential memorandum to Thomason regarding "White House Press Charters" was leaked to the press, and that he told the Washington Post and ABC News that it contained "all anecdotal information."⁷⁷²

⁷⁶⁷ Id. at 57.

⁷⁶⁸ Kennedy GJ 7/30/96 at 100-01.

⁷⁶⁹ Leavy GJ 8/1/96 at 7.

⁷⁷⁰ See Myers GJ 7/23/96 at 56-57, 83.

⁷⁷¹ See Davison GJ 7/13/96 at 56 ("The press had gone wild. They were -- there was a tremendous amount of false information about us, our ownership, our association with Cornelius and Watkins. There was -- in other words, we were taking, in our image, a beating in the press"). See Myers GJ 7/23/96 at 96.

⁷⁷² Martens GJ 7/16/96 at 56, 115; Gearan GJ 7/11/96 at 24; Martens; Memorandum

Cornelius's February 15, 1993 memorandum was also leaked to the press.⁷⁷³ Cerda believed that Billy Dale was responsible for this, based on an earlier conversation where "he was threatening to release a confidential White House document to the press if we didn't -- I don't know -- if we messed with him."⁷⁷⁴

On May 19, 1993, a continuous meeting began in George Stephanopoulos's office, which involved numerous people over the course of three days.⁷⁷⁵ Myers explained the meeting's purpose was to evaluate the "enormous problem" caused by disclosure of the FBI's involvement, the summary dismissal of people with personal relationships with the White House press corps,

from Martens to Thomason 3/3/93, OIC Bates No. AL-DC-00007620 (with fax cover sheet, summary attachment, and accompanying notes); see also, supra, Subsection (C)(2). On May 21, 1993, Myers met with Martens and Thomason, who had just arrived from Florida, to discuss Martens's January 29, 1993 memo to Thomason, as the press had a copy of the memo and was accusing Thomason of trying to get White House business for a company he owned in part. Myers GJ 7/23/96 at 64. Thomason told Myers that he had a minor financial interest in TRM, that he thought the Travel Office should be run as "efficiently as possible, and that he had a company that he thought might be helpful in that regard." Id. at 72.

⁷⁷³ Kennedy testified that neither he nor Foster knew about the February 15 memo until after the firings and that, if they had, "it certainly would have made us a helluva lot more cautious" Kennedy GJ 7/30/96 at 85.

⁷⁷⁴ Cerda GJ 7/1/96 at 134; see also Cerda GJ 7/1/96 at 133 ("[a]fter the firings, Brian [Foucart] had to go with Billy Dale to [transfer] the bank records. And Brian [Foucart] had a conversation with Billy Dale where Billy Dale said, ['I] have a copy of the February 15th memorandum. And if you guys want to play hardball, I'm going to play hardball right back. So don't mess with us, or something like that[']"). One of the fired employees, John Dreylinger, said that fellow Travel Office employee Maughan told him he had discovered a copy of the memo, made a copy of it, and given it to Dale. Dreylinger GJ 6/6/96 at 10-11. Dreylinger said he actually was given a copy of the memo by Travel Office employee Barnaby Brasseux the evening they were fired. Id. at 10-11.

⁷⁷⁵ Myers said that after the first press briefing they began a running meeting, mostly in George Stephanopoulos's office, that started "[t]he afternoon of the 19th" and went "at least through the afternoon of the 21st." Myers GJ 7/23/96 at 56.

and the limited evidence to support their dismissal.⁷⁷⁶ Another problem discussed at the meeting was the President's trip to New Hampshire planned for Saturday, May 22, 1993. As Myers observed, "[w]e had a trip and no Travel Office."⁷⁷⁷

The necessity of a public response resulted in coordination between the White House press office and the FBI. On May 21, 1993, Stephanopoulos, White House Counsel Bernard Nussbaum, Foster, Patsy Thomasson, Myers's assistant David Leavy, and FBI Agent John Collingwood⁷⁷⁸ met in Stephanopoulos's office.⁷⁷⁹ Kennedy arrived after the meeting had begun.⁷⁸⁰ The purpose of the meeting was to brief Stephanopoulos on the FBI investigation and the information the press had received, and to determine how to respond.⁷⁸¹ More specifically, Stephanopoulos sought to ensure that the FBI and the White House were giving consistent

⁷⁷⁶ Id. at 56-57.

⁷⁷⁷ Myers GJ 7/23/96 at 61. The first trip handled by the newly reorganized Travel Office was a disaster. Id. at 169. Cornelius was overwhelmed and "felt really hung out to dry," because Watkins would not deal with her or help. Cornelius GJ 7/25/96 at 151-52. By Friday, May 21, World Wide left and was replaced by American Express. Carney GJ 7/13/96/ at 48-49. Sample said that she booked two charters for the White House and worked through May 31, when Watkins terminated her services. Sample GJ 6/13/96 at 67-68, 72.

⁷⁷⁸ Agent Collingwood was head of the FBI's Office of Public and Congressional Affairs. His duties included oversight of the press office. Collingwood GJ 6/6/96 at 2-3. He testified that, based on the White House's public announcement that the FBI was conducting an investigation of the Travel Office, his office decided to prepare a press response confirming the FBI's investigation. Id. at 5. The document was not intended to be a press release, but simply talking points to aid people in responding to press inquiries. Id. at 6-7.

⁷⁷⁹ Stephanopoulos GJ 7/2/96 at 8.

⁷⁸⁰ Kennedy GJ 7/30/96 at 102-03. Stephanopoulos testified that Watkins was "probably" there as well, though Stephanopoulos was not sure of that. Stephanopoulos GJ 7/2/96 at 36.

⁷⁸¹ Kennedy GJ 7/30/96 at 102-04.

information to the press.⁷⁸² Collingwood advised Stephanopoulos that the FBI was conducting a criminal investigation.⁷⁸³ As a result of the discussion, Collingwood amended the press response his office had prepared to indicate that the FBI had sufficient information to determine that additional criminal investigation was warranted; the prior version of the press response had also not expressly confirmed the criminal investigation's existence.⁷⁸⁴ Stephanopoulos handed out the amended version to the press at a briefing.⁷⁸⁵ The FBI later voiced objections that the White House had distributed the document.⁷⁸⁶

d. Watkins Publicly Denied That He Read the February 15, 1993 Cornelius-Cerda Memorandum Proposing Their Takeover of the Travel Office.

Cornelius testified that on May 21, 1993, she called Patsy Thomasson back in response to Thomasson's page.⁷⁸⁷ According to Cornelius, Thomasson told her that if anyone asked whether

⁷⁸² Stephanopoulos GJ 7/2/96 at 11-12. Stephanopoulos said that he never heard that either Foster or Watkins, if Watkins was there, mention they had spoken with the First Lady about the Travel Office in advance of the firings. Stephanopoulos GJ 7/2/96 at 36-37.

⁷⁸³ Collingwood GJ 6/6/96 at 18.

⁷⁸⁴ Stephanopoulos GJ 7/2/96 at 15-16; Collingwood GJ 6/6/96 at 19-20.

⁷⁸⁵ Stephanopoulos GJ 7/2/96 at 16. See Exh. I of the White House Travel Office Management Review, GJ 95-2 Exh. 68, for copies of FBI press releases dated May 19, May 20, and May 21 respectively. The May 21, 1993 version was provided to the press by Stephanopoulos and his staff.

⁷⁸⁶ Stephanopoulos GJ 7/2/96 at 17. Collingwood explained, "they took essentially what is a press release or a press response . . . and released it to the public without asking us first is it all right. I don't -- I am not aware of any other agency ever taking one of our press responses or press releases and releasing it to the press." Collingwood GJ 6/6/96 at 26. Collingwood later discussed the situation with Dee Dee Myers. Id. at 27-28.

⁷⁸⁷ Cornelius GJ 7/25/96 at 156. The call was prompted by press interest in the Cornelius/Cerda memo. On May 20, 1993 Wolf Blitzer of CNN and Gene Gibbons of Reuters came to see Myers and showed her a copy of the memo. Myers asked the reporters not to write a story that night and to give her the opportunity to collect information; she and Stephanopoulos

Watkins ever read the February 15, 1993 memorandum, she was to say he had not.⁷⁸⁸ Thomasson denied ever making such a statement.⁷⁸⁹ The same day, Cerda received a page from Patsy Thomasson, but was unable to reach Thomasson when she returned the call.⁷⁹⁰

The next morning, Cornelius saw Stephanopoulos state on television that Watkins never read the Cornelius-Cerda memorandum.⁷⁹¹ Cerda testified that, the next day she and Watkins were waiting to enter Dee Dee Myers's office when Watkins said to her, "you never saw me read the memorandum."⁷⁹² Cerda understood from the comment that Watkins wanted her to say something that was untrue.⁷⁹³ Cerda also testified that after this conversation, Watkins walked into Myers's office to answer questions and Cerda heard him "[say] something to Dee Dee about, Clarissa can back up my story" about whether he had solicited and read the memorandum.⁷⁹⁴

then went to see Watkins who told her he had never read the memo. Myers GJ 7/23/96 at 75-76. The next morning, Blitzer and Gibbons came to the White House and Myers and Stephanopoulos explained what they had learned. Myers GJ 7/23/96 at 80.

⁷⁸⁸ Cerda GJ 7/1/96 at 135.

⁷⁸⁹ Thomasson GJ 7/24/96 at 119-21.

⁷⁹⁰ Cerda GJ 7/1/96 at 134-35.

⁷⁹¹ Cornelius GJ 7/25/96 at 157-58. Cornelius was extremely upset and called Eller, who told her that Watkins said he did not read the memorandum and Stephanopoulos believed him. Cornelius testified that Eller told Stephanopoulos to be careful, and Stephanopoulos told Eller to stay out of it. She further stated that she and Cerda later told Dee Dee Myers that they thought Watkins did read the memo. Id. Eller "did not recall specifically" whether or not Cornelius told him that Thomasson and Watkins were trying to get her to say that David Watkins did not read the February 15 memo prior to May 19. Eller GJ 7/17/96 at 110.

⁷⁹² Cerda GJ 7/1/96 at 137-38.

⁷⁹³ Id. at 137.

⁷⁹⁴ Id.

Immediately after his conversation with Myers, Watkins, according to Cerda stated: "[T]his is something you did on your own, right? And you can back up my story."⁷⁹⁵

Watkins later admitted that he had glanced at the organizational chart attached to the memorandum, though he was not specific about when this occurred.⁷⁹⁶ He also admitted that he told Thomasson to call Cornelius and to ask her if he (Watkins) had ever told Cornelius that he had read the memorandum.⁷⁹⁷ Watkins insisted that he never instructed Thomasson to attempt to get Cornelius or Cerda to say something that was untrue.⁷⁹⁸ Watkins also recalled telling Cornelius and Cerda, "I never said to you all that I read [the] memo."⁷⁹⁹

e. Cornelius Was Urged to Resign.

Cornelius also testified that beginning in June 1993, Watkins tried to get her to resign.⁸⁰⁰ Brian Foucart called Cornelius's home on June 1, 1993 and asked her to resign in light of the harsh press criticism of the White House.⁸⁰¹ Cornelius refused.⁸⁰² According to Cerda, Cornelius wanted to speak with the President about the pressure to resign and the actions of Watkins and

⁷⁹⁵ Id. at 137-38.

⁷⁹⁶ Watkins Int. 11/22/96 at 12.

⁷⁹⁷ Id. at 28.

⁷⁹⁸ Id. at 28-30.

⁷⁹⁹ Watkins Int. 11/22/96 at 29. The GAO was aware of this dispute and the respective parties' positions on whether or not Watkins had read the memo. Nancy Kingsbury deemed the disagreement "not relevant" to the GAO's investigation. Kingsbury GJ 6/27/96 at 34-36.

⁸⁰⁰ Cornelius GJ 7/25/96 at 200-01.

⁸⁰¹ Cornelius GJ 7/25/96 at 201-03; Cerda GJ 7/1/96 at 139-40.

⁸⁰² Cerda GJ 7/1/96 at 140. The next day Foucart again urged Cornelius to resign. Cornelius GJ 7/25/96 at 203.

Thomasson.⁸⁰³ Watkins stated that he initiated the contact with Cornelius regarding resignation because the press was hammering Cornelius and she was not performing adequately in her position in the Travel Office.⁸⁰⁴

The same day, Cerda called Thomasson in response to an urgent page, and Thomasson told Cerda she needed to speak with her immediately.⁸⁰⁵ They met in a "strange alcove."⁸⁰⁶ According to Cerda, Thomasson stated that she was very worried about Cornelius, that Watkins was going to fire her any second because she was "screwing up," and that the best solution was for Cornelius to resign to save Watkins's job.⁸⁰⁷ Thomasson told Cerda to convince Cornelius to submit a resignation memorandum.⁸⁰⁸ Cerda did not pass along the information to Cornelius, but "consulted counsel," -- Associate White House Counsel Cliff Sloan.⁸⁰⁹ Cerda testified that she told Thomasson she had spoken with counsel, and Thomasson said that if she had known that Cerda would repeat the conversation to counsel she would not have had it with her; Thomasson

⁸⁰³ Cerda GJ 7/1/96 at 147; see also Cornelius GJ 7/25/96 at 200.

⁸⁰⁴ Watkins Int. 11/22/96 at 30.

⁸⁰⁵ Cerda GJ 7/1/96 at 144-45; Thomasson GJ 7/24/96 at 122-25.

⁸⁰⁶ Cerda GJ 7/1/96 at 145-46.

⁸⁰⁷ Id. at 145.

⁸⁰⁸ Id. at 145, 174-75.

⁸⁰⁹ Id. Thomasson admitted speaking with Cerda, but claimed it was out of concern for Cornelius's health, and that Watkins wanted Cornelius to know that there was a job available at the Democratic National Committee's Travel Office for her so that she could get away from the pressure of the White House. Thomasson GJ 7/24/96 at 123. Thomasson admitted telling Cerda "it looked like Catherine might have to resign," but denied saying Cornelius had to resign to save Watkins's job. Id. at 124.

then "slammed the phone down and hung up" ⁸¹⁰ Thomasson said, "I don't recall saying that," but says she told Cerda, "I would rather she had talked to me." ⁸¹¹

Associate White House Counsel Cliff Sloan testified that Cerda came into his office in late May or early June and told him that Thomasson paged her, she met with Thomasson, and Thomasson told her that Cornelius should resign from the White House. ⁸¹² Sloan stated that Cerda "seemed somewhat upset." ⁸¹³ Sloan also testified that he told Cerda not to do anything about it, as he would speak to Nussbaum. ⁸¹⁴ According to Sloan, Nussbaum said Thomasson's actions were inappropriate, that Cornelius should not be asked to resign, and that the White House Travel Office Management Review should be allowed to take its course. ⁸¹⁵ At Nussbaum's instruction, Sloan related Cerda's information to Podesta and Gearan who agreed with Nussbaum's assessment. ⁸¹⁶ Sloan also repeated the information to Foster. ⁸¹⁷ Sloan then told Cerda that Nussbaum indicated she should not do anything about Thomasson's statements. ⁸¹⁸

⁸¹⁰ Cerda GJ 7/1/96 at 145-46.

⁸¹¹ Thomasson GJ 7/24/96 at 126-27.

⁸¹² Sloan GJ 8/1/96 at 93.

⁸¹³ Id.

⁸¹⁴ Id. at 94.

⁸¹⁵ Id.

⁸¹⁶ Id. at 95. Nussbaum testified that, subsequent to the firings, he heard that Thomasson wanted Cornelius to resign. Nussbaum GJ 12/2/96 at 80. He stated that he vaguely recalled a discussion with Podesta during which he told Podesta that Foucart and Thomasson should not be pressuring Cornelius to resign. Id. at 80-81.

⁸¹⁷ Sloan GJ 8/1/96 at 94.

⁸¹⁸ Id. at 95.

On the afternoon of July 3, Cornelius called Nancy Hernreich, Deputy Assistant to the President for Appointments and Scheduling, to ask to meet with the President regarding Thomasson's and Watkins's actions.⁸¹⁹ The President called Cornelius back, and later, she went to see him for fifteen minutes in the Oval Office.⁸²⁰ Cornelius said the President told her he was "sorry [she] had been hurt" and "that he would make sure in the end it was okay for me."⁸²¹

E. The White House Responded to Public Controversy Over the Firings By Conducting an Internal Review.

From May 25-26, 1993, McLarty convened a series of meetings in his office which were attended at various times by Foster, Watkins, Lindsey, Kennedy, Nussbaum, Stephanopoulos, Myers, Mark Gearan, and others.⁸²² The purpose of the meetings was to create a chronology of the Travel Office firings⁸²³ and update everyone involved.⁸²⁴ The meeting also considered whether or not the White House should conduct an internal review of the firings.⁸²⁵

⁸¹⁹ Cornelius GJ 7/25/96 at 195-96, 199.

⁸²⁰ Id. at 197.

⁸²¹ Id. at 197-98. Cornelius said she did not know of any actual intervention on her behalf by the President. Id.

⁸²² See generally Kennedy's notes of meeting 5/25/93, OIC Bates No. 542-DC-00018416; Gearan GJ 7/11/96 at 15-17. Although Mark Gearan recalled that such a meeting took place, he remembered little about the details of the meeting. Id.

⁸²³ See Gearan GJ 7/11/96 at 16. On one draft of this chronology, McLarty wrote the following, "May 16 - HRC Pressure." GJ 95-2 Exh. 145 (emphasis in original). McLarty testified that although he could not specifically recall why he made this notation, he was certain that it either related to the pressure he felt as a result of his May 16 meeting with Mrs. Clinton, or that someone else at the meeting had mentioned pressure from Mrs. Clinton. See McLarty GJ 7/31/96 at 147.

⁸²⁴ Kennedy GJ 7/30/96 at 106.

⁸²⁵ Stephanopoulos GJ 9/8/95 at 5-6.

Stephanopoulos said those in favor of the review ultimately carried the day because the Travel Office affair "became a matter of some controversy in the press, and it was decided that that was the best way to dispose [of] the controversy, to have our own investigation to get to the bottom of it and put it out."⁸²⁶ Not everyone involved in handling the fallout from the firings believed that the review was a good idea.⁸²⁷ One of those was David Gergen, who testified: "My own view is that when these things happen, if you're going to do your entire review, you better damn well be candid. And you better lay all of the facts out, because if you don't, it's going to come back and bite you."⁸²⁸ Nussbaum also opposed it, as well as others who "had different views about whether or not the review would be the right thing to do," but McLarty recommended it to the President, and the President approved.⁸²⁹

At McLarty's direction,⁸³⁰ Deputy Chief of Staff Mark Gearan assigned John Podesta⁸³¹ and Todd Stern⁸³² to oversee an internal management review of the Travel Office firings.⁸³³

⁸²⁶ Id. at 6.

⁸²⁷ See Gergen GJ 7/1/96 at 10-11.

⁸²⁸ Id.

⁸²⁹ McLarty 7/31/96 GJ at 142-43. In addition, as a result of these meetings, five of the employees's terminations were reversed and they were placed on paid administrative leave. See Dreylinger GJ 6/6/96 at 12-14. Only Dale and his deputy Gary Wright remained terminated. See Wright GJ 7/9/96 at 34; Dale GJ 7/9/96 at 132.

Also, on May 27, the President and McLarty asked David Gergen, who had served in previous Republican administrations and was a member of the D.C. press community, to come in and "help them think through their problems" with communication with the public, correct their "mistakes" and "floundering" and "rough time" the new administration was having, the latest chapter of which was the Travel Office incident. Gergen GJ 7/1/96 at 4-6.

⁸³⁰ See McLarty 7/31/96 GJ at 141-42.

⁸³¹ Podesta served as an Assistant to the President and Staff Secretary from January 20, 1993 until July 1, 1995. Podesta GJ 7/18/96 at 4. Podesta had worked as a volunteer in the 1992

Podesta and Stern were assisted by two members of Gearan's staff, Dwight Holton and Andre Oliver.⁸³⁴ The Podesta/Stern review resulted in the publication of a report on July 2, 1993.⁸³⁵

When McLarty was asked whether the report's purpose was "to get the facts out," the following exchange resulted:

A: . . . this is a management review. That was the purpose of it. And I think there are a number of meetings that could have had a much more lengthy discussion, but would not have served the purpose of this report. It was not just this meeting. . . .

Q: What was the purpose of the report?

A: The purpose of the report was just as I described it.

Q: To get the facts out.

A: Well, to look at the decision making that had taken place, what had gone wrong, and what recommendations -- what we might do in the future to avoid mistakes that were made. As part of that, it did -- the report did have a chronology or a factual section, but the emphasis of the review was to examine the decision making process and then to make recommendations how that could be improved upon. That was the emphasis of a management -- and I think it's called a management review.

Q: Now, all of that could have been done confidentially and not released to the public.

Clinton-Gore campaign and received the job offer to work in the White House through his friendship with Susan Thomases. Id. at 5.

⁸³² Stern, himself an attorney, served as Podesta's deputy until July 1995, when he became Staff Secretary. Stern GJ 7/10/96 at 4-5.

⁸³³ Podesta GJ 7/18/96 at 8-9.

⁸³⁴ Podesta GJ 7/18/96 at 13; Stern GJ 7/10/96 at 17; Holton GJ 7/2/96 at 7; Oliver GJ 7/2/96 at 5-6.

⁸³⁵ GJ 95-2 Exh. 68. Dee Dee Myers explained that releasing the report "into the black hole of a four-day weekend, or three day weekend" when "people are more interested in having barbecues with their families" was intended to make "it minimum news." Myers GJ 7/23/96 at 104-05.

A: It could have been.

Q: I mean, part of the purpose of the generation of this document was to get the facts out to the public about what had occurred.

A: Well, there were a number of ways that we could approach this situation.⁸³⁶

Public scrutiny of the Travel Office firings posed a dilemma for the Management Review team.⁸³⁷ Stern recognized the significance of a fundamental question being raised by the public regarding the nature and extent of senior White House staff involvement in the decision to dismiss the Travel Office employees.⁸³⁸ However, the final report prepared by the Management Review team was, ultimately, incomplete in its answer to this question. The report's incompleteness was a result of: 1) the decision of several staff to provide less than complete information to the Management Review; 2) the manner in which the Management Review interviews were conducted; and 3) editorial changes to the report made as the Management Review was being prepared.⁸³⁹

Ultimately, the Management Review's final version was released to the public in early July 1993. Several White House staff members were reprimanded as a result of the Management Review.⁸⁴⁰

⁸³⁶ McLarty GJ 7/31/96 at 38-39.

⁸³⁷ Stern GJ 7/10/96 at 72-73.

⁸³⁸ GJ 95-2 Exh. 149.

⁸³⁹ Watkins Int. 11/22/96 at 32; Stern GJ 7/10/96 at 37; Podesta GJ 7/18/96 at 17.

⁸⁴⁰ White House Travel Office Management Review at 17, 19-21 (July 2, 1993). The White House Travel Office Management Review itself does not state that anyone would be "reprimanded." At the press conference releasing the Management Review, Chief of Staff Mack McLarty said that Watkins, Eller, Cornelius and Kennedy were going to be reprimanded, though

1. Todd Stern Immediately Perceived the Tension Created by Questions Concerning Mrs. Clinton's Role in the Firings.

On May 26, Stern made several pages of notes to organize his thoughts about the Travel Office matter.⁸⁴¹ Stern wrote in part: "Report has to be as tough [and] self-critical as possible within the perimeter."⁸⁴² Stern additionally wrote:

- (i) Who knew about firings?
- (ii) Who ordered it [and] who approved?
- (iii) Who pushed it? Why?
- (iv) What did President know?

Problem is that if we do any kind of report [and] fail to address these Qs, pres[s] jumps on you wanting to know answers; while if you give answers that aren't fully honest (e.g. nothing re HRC)⁸⁴³ you risk hugely compounding the problem by getting caught in half-truths. You run [the] risk of turning this into a "cover-up."⁸⁴⁴

Stern explained that he made this notation because he had already heard rumors and read press reports about the possibility of Mrs. Clinton's involvement in the Travel Office firings.⁸⁴⁵

when asked what that meant, McLarty agreed that there would be no reduction in their pay or even a letter placed in their personnel files. Statement of White House Chief of Staff Thomas M. McLarty, White House Press Briefing (7/2/93). McLarty then referred to the public statement of reprimand at the press conference itself as the extent of the punishment. Id.

⁸⁴¹ GJ 95-2 Exh. 149.

⁸⁴² Id.

⁸⁴³ Stern said this reference was written by him innocently as "an example of simply taking a matter, which, from the sort of press point of view, would be the most sensitive. I mean, it's sort of -- if you were in the military context, you'd say nothing about the [G]eneral, rather than nothing about the [P]rivate as your example." Stern GJ 7/10/96 at 74. Stern denied anyone had ever instructed him not to refer to Mrs. Clinton in the report. Id. at 73-74.

⁸⁴⁴ GJ 95-2 Exh. 149 (emphasis supplied).

⁸⁴⁵ Stern GJ 7/10/96 at 74.

Stern also wrote:

We need to think seriously about whether or not it won't be better to come clean, even to [the] point of conceding that HRC had some interest.⁸⁴⁶

Stern denied that any separate agenda concerning treatment of Mrs. Clinton's involvement existed:

Q: Did you . . . decide to ask witnesses in your interview process that you were going to undertake about the First Lady's role?

A: We didn't decide to ask about or not to ask about the First Lady's role, per se. We decided to ask -- to find out from witnesses what happened. We didn't have a separate standard for the First Lady.

Q: Did you, in fact, ask witnesses as you went along in your review -- interviews, about the First Lady's role in the firing?

. . . .

A. We didn't -- we didn't -- I don't think that we asked witnesses about Jeff Eller's role. I don't think we asked witnesses about the First Lady's role. I don't think we asked witnesses -- I mean, I don't think we asked in that form, but we certainly asked witnesses to tell us what happened. In fact, witnesses ultimately did tell us what happened.⁸⁴⁷

Podesta and Stern determined that it was necessary to interview many White House staffers, somewhere "on the order of 40 or 50 interviews."⁸⁴⁸ The interviews consisted of simply asking each witness for their version of what happened, with very few probing questions or

⁸⁴⁶ GJ 95-2 Exh. 149.

⁸⁴⁷ Stern GJ 7/10/96 at 37.

⁸⁴⁸ Id. at 27. The team was informed that the only witnesses they could not interview were the former Travel Office employees, a restriction imposed by the Justice Department. Id. at 54.

follow-ups.⁸⁴⁹ In addition to the interviews, on June 11, Podesta and Stern sent a notice to the White House staff to produce all documents that were relevant to the Travel Office firings.⁸⁵⁰

2. The Management Review Sought Information From Senior White House Staff.

a. Harry Thomason.

The first person interviewed by Podesta and Stern was Harry Thomason,⁸⁵¹ who disclosed the fact that he had informed the President early in the Spring of 1993 of a problem with one of the offices in the White House dealing with travel.⁸⁵² Thomason told the President that he planned to follow-up with the appropriate people.⁸⁵³ Thomason did not tell Podesta and Stern that he had conversed with Mrs. Clinton about the Travel Office because Thomason said he was never asked.⁸⁵⁴ Podesta and Stern took notes of this interview.⁸⁵⁵

⁸⁴⁹ See Podesta GJ 7/18/96 at 17.

⁸⁵⁰ Stern GJ 7/10/96 at 20; GJ 95-2 Exh. 146. Podesta and Stern did not institute a method for cataloguing documents submitted in response to their request. Stern GJ 7/10/96 at 21. Stern maintained that all documents were eventually forwarded to the Office of the White House Counsel at the conclusion of the Management Review. Id.

⁸⁵¹ Podesta GJ 7/18/96 at 14; Stern GJ 7/10/96 at 86.

⁸⁵² Podesta GJ 7/18/96 at 15-16; GJ 95-2 Exh. 272 (Podesta's notes of Thomason interview); Stern GJ 7/10/96 at 88; GJ 95-2 Exh. 150 at 3 (Stern's notes of Thomason interview).

⁸⁵³ Podesta GJ 7/18/96 at 15-16.

⁸⁵⁴ Thomason GJ 7/17/96 at 148; Podesta GJ 7/18/96 at 16; Stern GJ 7/10/96 at 87-88. Podesta testified that he did not specifically ask Thomason any questions regarding the First Lady. Podesta GJ 7/18/96 at 16. Podesta said: "[W]e tried to inform people that we weren't conducting an investigation, we were just conducting a management review, that we tried to be non-confrontational." Id. at 17.

⁸⁵⁵ Podesta GJ 7/18/96 at 15; Stern GJ 7/10/96 at 86-87; GJ 95-2 Exh. 150; GJ 95-2 Exh. 272.

b. Vince Foster.

On June 3, 1993, Podesta and Stern interviewed Vince Foster.⁸⁵⁶ Foster did not divulge the fact that he had spoken with Hillary Clinton about the Travel Office prior to May 19.⁸⁵⁷ Following their format of simply asking witnesses to state what they knew with no follow-ups, Podesta and Stern did not query Foster about the role of Mrs. Clinton in the Travel Office firings.⁸⁵⁸ Stern testified that at one point in the interview they asked Foster if additional people, other than those he had previously mentioned, were involved in the Travel Office firings, and rather than saying no, Foster said: "[T]hat's all I think I should say."⁸⁵⁹ Note taker Holton said he thinks Foster "suggested there was an issue of privilege" concerning the First Lady.⁸⁶⁰ On June 30, Podesta reinterviewed Foster without Stern.⁸⁶¹ During that interview, Foster told Podesta that he had talked to Mrs. Clinton on May 13 about the Travel Office and that Mrs. Clinton had expressed her concern about the matter.⁸⁶²

⁸⁵⁶ Podesta GJ 7/18/96 at 27-28; Stern GJ 7/10/96 at 102.

⁸⁵⁷ Podesta GJ 7/18/96 at 28. Watkins admitted that he and Foster had expressly agreed to be protective of Mrs. Clinton during their White House Travel Office Management Review interviews. See Watkins Int. 11/22/96 at 32. Webster Hubbell, a longtime friend of the Clintons, testified that Vince Foster "was very protective of [Mrs. Clinton], and wanted to make sure that . . . she wasn't being criticized." Hubbell GJ 6/25/96 at 23.

⁸⁵⁸ Stern GJ 7/10/96 at 106.

⁸⁵⁹ Stern's notes 6/3/93, OIC Bates No. 210-DC-00000588 at 589; Stern GJ 7/10/96 at 115. Foster expressed concern that the notes being taken of himself and other interviewees "might be discoverable" by the many investigations that were likely to ensue. Podesta GJ 7/18/96 at 30; Stern GJ 7/10/96 at 229, 231.

⁸⁶⁰ Holton GJ 7/2/96 at 35-37.

⁸⁶¹ Stern GJ 7/10/96 at 103; Podesta GJ 7/18/96 at 66; see also Stern's notes' description of Podesta's meeting with Foster undated, OIC Bates No. 542-DC-00018108.

⁸⁶² Stern GJ 7/10/96 at 117. Foster took 1 1/2 pages of notes on the interview. These

c. Bernard Nussbaum.

Stern and Podesta interviewed White House Counsel Bernard Nussbaum on June 8, 1993.⁸⁶³ Mr. Nussbaum informed Podesta and Stern that Foster had informed him of a desire to fire the Travel Office employees quickly, but that it was necessary for Peat Marwick to conduct

notes reflected that Podesta told Foster about the contacts with Mrs. Clinton that Watkins and McLarty had reported to Podesta. Regarding Foster's contacts with Mrs. Clinton, the notes stated:

I told John that after a late lunch on Thurs I spoke with HRC. . . . She was aware of some assertion of impropriety in tvl office and wanted to know what was being done about it - I related I had given to Kennedy as our security officer.

I related I had a later discussion on Thurs (evening?) . . . in which I advised her outside auditors were being used and probably told her they would start Friday.

I told him I may have had a few short, incidental non-substantive discussions subsequently to pass on my understanding from DW of status, which changed.

OIC Bates No. 542-DC-00001066-67. Foster's notes further reflect the following:

After discussing other issues we mutually exchanged views that HRC is perceived as being involved in decision and events in which she has no participation.

OIC Bates No. 542-DC-00001067. The OIC also sought the notes of Foster's discussion with his lawyer James Hamilton, which raised the unsettled issue of whether the attorney-client privilege survived the death of the client. At the appellate level, a divided panel of the United States Court of Appeals for the District of Columbia Circuit ruled that those notes should be produced to the OIC. In re: Sealed Case, 124 F.3d 230 (1997). The Supreme Court ultimately reversed, holding that the attorney-client privilege survived the death of the client, preserving the confidentiality of the notes. Swidler & Berlin v. United States, 524 U.S. 399 (1998).

⁸⁶³ Podesta GJ 7/18/96 at 50-51.

an audit first.⁸⁶⁴ Nussbaum also told them Foster was "under some sort of pressure to move quickly," although it was not a foregone conclusion that the employees would be fired.⁸⁶⁵

d. David Watkins.

Podesta and Stern also interviewed David Watkins on June 3, 1993.⁸⁶⁶ When asked whether there had been pressure on Watkins to act quickly regarding the Travel Office matter, Watkins told Podesta and Stern that:

HT thought this was a story, "ro[o]ting out corruption." There was the thinking that the Travel Office employees "are not our guys." Also a feeling that there was a need to get ahead of the story.⁸⁶⁷

Watkins mentioned no pressure from McLarty or Foster.⁸⁶⁸ As with Thomason and Foster, Watkins failed to tell Podesta and Stern that he had spoken to Hillary Clinton about the Travel Office on May 14⁸⁶⁹ -- nor did they ask him whether she had any role.⁸⁷⁰

The May 14 telephone conversation between Watkins and Mrs. Clinton was first disclosed to Podesta and Stern in early June by way of a handwritten note⁸⁷¹ that Watkins

⁸⁶⁴ Id. at 51.

⁸⁶⁵ Id. This information was not included in the White House Travel Office Management Review report. In the grand jury, Podesta first testified that Foster informed him that Jeff Eller and Harry Thomason were pressing him to move quickly on the Travel Office matter. Id. at 52. Podesta then stated that Foster did not tell him that Thomason and Eller were pressing Foster to take action. Id.

⁸⁶⁶ Id. at 30; Stern GJ 7/10/96 at 122-23.

⁸⁶⁷ Typed notes of meeting with David Watkins 6/3/93, OIC Bates No. 542-DC-00015004 at 15007.

⁸⁶⁸ Podesta GJ 7/18/96 at 31.

⁸⁶⁹ Id.

⁸⁷⁰ Stern GJ 7/10/96 at 127.

provided.⁸⁷² Podesta and Stern reinterviewed Watkins on June 15, who once again did not mention that he felt "pressured by the First Lady to act."⁸⁷³ Watkins did not discuss his handwritten note during the interview with Podesta, because Podesta did not confront Watkins with the note or attempt to resolve the inconsistency between Watkins's note and his statements in the interview.⁸⁷⁴

Thereafter, according to Podesta and Stern, Watkins's May 14 telephone conversation with Mrs. Clinton regarding the Travel Office was described to Podesta by Mrs. Clinton on June

⁸⁷¹ On June 2, 1993, Watkins wrote:

Hillary telephone conversation with D. Watkins on Friday, May 14.
"Harry says his people can run things better; same money, etc. And besides we need those people out - We need our people in - We need the slots.-

Watkins also wrote the following in the same note:

Travel Office Review has become an inquisition

Neel, Podesta, Gearan, McLarty, Panetta -

- * No teamwork

- * Attitude of guilty or stupidity

- * Need War Room to house - computers, etc.

Is the real story to be told?

Watkins's notes 6/2/93, OIC Bates No. 542-DC-00001499. Watkins also told the OIC that he believed that the White House Management Review was a "whitewash" designed to find scapegoats. Watkins Int. 6/13/00 at 2.

⁸⁷² Podesta GJ 7/18/96 at 35.

⁸⁷³ Stern GJ 7/1/0/96 at 137.

⁸⁷⁴ Podesta GJ 7/18/96 at 35-38.

30.⁸⁷⁵ Podesta claimed that either that day or the following day, he confirmed with Watkins that Watkins had spoken to Mrs. Clinton prior to May 19 about the Travel Office.⁸⁷⁶ Podesta did not take notes during his final interview of Watkins and did not precisely recall what Watkins said other than confirming that he had a conversation with Mrs. Clinton.⁸⁷⁷

Podesta and Stern did not confront Watkins about his failure to disclose his discussions with the First Lady during his two previous interviews on June 3 and June 15,⁸⁷⁸ although Podesta admitted that Watkins's notes differed from what they had been told by Watkins.⁸⁷⁹ Prior to his third and final interview with Stern and Podesta for the White House Travel Office Management Review, Watkins gave them his notes referring to Watkins's contact with Mrs. Clinton on the Travel Office.⁸⁸⁰ Podesta and Stern nevertheless failed to question Watkins about the information in the notes, and Watkins's "perception was they didn't want to hear about" Mrs. Clinton or her role, remarking that Podesta "didn't pursue" that issue.⁸⁸¹

When asked why he did "not do the simple thing of either showing that document to Mr. Watkins or showing it to the First Lady and saying is this what happened," Podesta responded, "I have already explained to you that I didn't think much of this document because I didn't think it was -- first of all, I didn't think that the Travel Office review had become an inquisition so that I

⁸⁷⁵ Id. at 32; Stern GJ 7/10/96 at 171.

⁸⁷⁶ Podesta GJ 7/18/96 at 32-33.

⁸⁷⁷ Id. at 32-34.

⁸⁷⁸ Id. at 33.

⁸⁷⁹ Id. at 37-38.

⁸⁸⁰ Id. at 34-36.

⁸⁸¹ Watkins Int. 11/22/96 at 32-33; Podesta GJ 7/18/96 at 35-39.

didn't put much stock in this document. I asked her what happened, I asked him what happened. And that was -- that's the way we conducted the review. We tried to do it in a non-confrontational way but to get the story, I think we got the story and we wrote it up."⁸⁸² Podesta and Stern both claimed they did not disclose the substance of Watkins's notes to Mrs. Clinton.⁸⁸³ Podesta could not recall whether he had shown Watkins's notes to McLarty.⁸⁸⁴ Podesta also made no reference whatsoever to Watkins's notes in the White House Travel Office Management Review report.⁸⁸⁵

e. Thomas F. "Mack" McLarty.

Podesta and Stern also interviewed Mack McLarty. McLarty is certain he told Podesta of his conversations with the First Lady and that she viewed the Travel Office as a "serious matter": "I am positive that I made it clear to Mr. Podesta during our discussion that the First Lady had discussed this matter with me and that she took it as a very serious matter," though McLarty is not sure if he told Podesta that this concern was communicated in two separate conversations.⁸⁸⁶ Podesta said he found out "relatively early" in the interviewing process, and before he interviewed Mrs. Clinton, that McLarty had spoken with Mrs. Clinton about the firings, though

⁸⁸² Podesta GJ 7/18/96 at 39-40. Stern said, "I think we didn't ask her that question because Mr. Watkins -- because we had talked with Mr. Watkins at a great deal of length. He had not told us any of this stuff. And we had a memo that sort of appeared out of the blue for no particular reason, and which exhibited a good deal of anger about the whole process, and which we were not prepared to put a great deal of credence in without Mr. Watkins telling us orally what he had to say." Stern GJ 7/10/96 at 209-10.

⁸⁸³ Podesta GJ 7/18/96 at 39; Stern GJ 7/10/96 at 196.

⁸⁸⁴ Podesta GJ 7/18/96 at 40.

⁸⁸⁵ Id.

⁸⁸⁶ McLarty GJ 7/31/96 at 109.

Podesta did not take any notes of what McLarty told him.⁸⁸⁷ Podesta said that it was related to him that Mrs. Clinton said to McLarty, "'Were you looking into it, are you on top of it?'" and "McLarty told her that he knew about it and he was on top of it . . . that he was aware of it and he was dealing with it."⁸⁸⁸

Todd Stern testified as follows when questioned about what he and Podesta knew and reported about the communications between Mrs. Clinton and McLarty:⁸⁸⁹

Q: And what, to your knowledge, was the substance of that conversation based on what Mr. McLarty and the First Lady told you?

A: Well, I'd go back to the report.

Q: That would be fine if you go back to the report and read to me what the substance of the conversation was.

A: I think it was -- let's see. We just -- what the report says is late that afternoon -- this is on page 9 of Exhibit 68. Late that afternoon, referring to May 13th, she, meaning Mrs. Clinton, saw McLarty and inquired about the situation in the travel office. That's basically what both of them [sic] us, that she --

Q: All right. Well, what did she ask?

A: I don't have more than that to say.

Q: What did she say?

A: I think he -- I really don't have more than that. I mean, she -- she inquired about what was going on. There were -- again she had heard problems in the office. She had already talked to Foster at that point. My understanding is that she asked McLarty what was going on, sort of for a status update, and he told her. At that point --

Q: Well, what did he tell her?

⁸⁸⁷ Podesta GJ 7/18/96 at 78.

⁸⁸⁸ Id. at 85-86.

⁸⁸⁹ Stern GJ 7/10/96 at 163.

A: I don't have more than what I just told you.

Q: Well, it's not in the report what he told her.

A: Yeah, but I've given you my answer.

Q: Well, what did he tell her?

A: What do you want me to say? I've given you my answer.

Q: Well, I want you to answer the question, what did Mr. McLarty tell you --

A: I've answered the question, sir.⁸⁹⁰

f. Mrs. Clinton.

On June 30, Podesta and Stern arranged through the First Lady's Chief of Staff Maggie Williams to interview Mrs. Clinton.⁸⁹¹ Stern took two pages of notes during this interview.⁸⁹² According to Podesta and Stern, David Gergen, Counselor to the President, was present during the interview.⁸⁹³ During the interview, Mrs. Clinton mentioned certain conversations about the Travel Office on May 13 with Foster and McLarty.⁸⁹⁴ Mrs. Clinton told them she could not remember whether Harry Thomason had mentioned the Travel Office to her,⁸⁹⁵ but did recount

⁸⁹⁰ Stern GJ 7/10/96 at 164-65.

⁸⁹¹ M. Williams GJ 7/30/96 at 32; Podesta GJ 7/18/96 at 32; Stern GJ 7/10/96 at 142.

⁸⁹² Podesta GJ 7/18/96 at 68; Stern GJ 7/10/96 at 142; Stern's notes of Hillary Rodham Clinton's interview 6/30/93, OIC Bates No. 542-DC-00018265.

⁸⁹³ Podesta GJ 7/18/96 at 68; Stern GJ 7/10/96 at 142. Gergen testified that he had no involvement in investigating the Travel Office matters, "This was something that . . . [he] didn't regard -- because [he] had not been there at the time the Travel Office occurred." Gergen GJ 7/31/96 at 6-7.

⁸⁹⁴ Podesta GJ 7/18/96 at 69-70; Stern GJ 7/10/96 at 144-45.

⁸⁹⁵ Podesta GJ 7/18/96 at 70; Stern GJ 7/10/96 at 143-44. Stern's notations indicated Mrs. Clinton spoke with McLarty, Watkins, Foster, and Thomason about the Travel Office. See

her May 14 conversation with Watkins.⁸⁹⁶ However, Mrs. Clinton's summary of the conversation disclosed only that Watkins had updated her on the Peat Marwick audit, not any details of what she might have said to Watkins.⁸⁹⁷ The First Lady also recounted her May 14 conversation with Foster indicating that he then informed her there was a problem in the Travel Office and that William Kennedy was handling it. Podesta listened to Mrs. Clinton's narrative and asked no follow-up questions.⁸⁹⁸

In short, Watkins and Foster were each interviewed a minimum of three separate occasions.⁸⁹⁹ During their first two interviews, neither Foster nor Watkins mentioned they had held conversations with Mrs. Clinton before the firings.⁹⁰⁰ After Mrs. Clinton disclosed the conversations with Foster and Watkins to Podesta, Foster and Watkins described (albeit incompletely) their consultation with her during the days leading up to the firings.⁹⁰¹

Stern's notes of Hillary Rodham Clinton's interview 6/30/93, OIC Bates No. 542-DC-00018265. Podesta could not explain the contradiction between his recollection of the interview and Stern's notes. Podesta GJ 7/18/96 at 71.

⁸⁹⁶ Podesta GJ 7/18/96 at 71.

⁸⁹⁷ Id. at 71-72; Stern GJ 7/10/96 at 145.

⁸⁹⁸ Podesta GJ 7/18/96 at 72. Podesta also interviewed President Clinton "a couple of days" prior to the report's public release on July 2, 1993. Id. at 77. Podesta learned that Thomason had mentioned a problem in the Travel Office to the President in the early Spring. Id. Podesta testified that he did not take any notes of his conversation with the President. Id.

⁸⁹⁹ Id. at 89-92; Stern GJ 7/10/96 at 200, 204, 207.

⁹⁰⁰ Podesta GJ 7/18/96 at 31-32, 75; Stern GJ 7/10/96 at 132.

⁹⁰¹ Podesta GJ 7/18/96 at 75.

3. The Final Version of the White House Travel Office Management Review Substantially Reduced Mrs. Clinton's Involvement from the Involvement Reflected in Earlier Drafts.

The publicly released final version of the White House Travel Office Management Review did not contain a complete account of: 1) McLarty's conversations with Mrs. Clinton; 2) Foster's conversations with Mrs. Clinton; and 3) Watkins's conversations with Mrs. Clinton.⁹⁰² In part, this was due to editorial changes made to the Management Review as it was drafted.

a. The Management Review Described McLarty's Conversations With Mrs. Clinton.

The Management Review contained an incomplete account of the two conversations between Mrs. Clinton and McLarty, in which she stated "her concerns" about the Travel Office. The evidence suggests that the discussion of their May 13 conversation was purposefully amended by Mrs. Clinton's Chief of Staff Maggie Williams. The May 16 discussion was omitted completely.

i. The Description Of The May 13 Discussion.

A draft copy of Podesta and Stern's report contained the following statement:

Late that afternoon [May 13], she [Mrs. Clinton] saw McLarty in his office and mentioned her concerns to him.⁹⁰³

The final version of the Management Report contained the following amended language:

⁹⁰² But cf. White House Press Briefing, July 2, 1993 (Chief of Staff McLarty asserting that the White House Management Review was "thorough," "complete" and "candid;" John Podesta rejecting the suggestion of appointing a "special prosecutor" "given the thorough review and the thorough job that's done in this report.")

⁹⁰³ Draft of White House Travel Office Management Review 6/30/93, OIC Bates No. 542-DC-00018561 at 18568. Podesta and Stern never conducted a formal interview of McLarty regarding his involvement in the Travel Office firings, but instead had several informal discussions with him, where no notes were taken. Stern GJ 7/10/96 at 163-64. It was during these discussions that McLarty informed Podesta and Stern about his May 13 conversation with Mrs. Clinton. Id. at 164-65.

Late that afternoon she saw McLarty and inquired about the situation in the Travel Office.⁹⁰⁴

Podesta argued that although these two sentences differed, they had the same meaning; he stated he did not recall why the sentence was changed in the final report.⁹⁰⁵

When McLarty was questioned about why Mrs. Clinton's mention of "concerns" had disappeared from the draft report to reappear as merely having "inquired about the situation" in the final version, McLarty explained, "this is a management review. I don't think it intends to be a thorough investigation of this matter. It is a management review of the chronology of what took place, why the decisions were made, where the decision making went wrong, and recommendations, particularly important, of how we can avoid this in the future. . . . I would agree that you could have put more information about this and probably a lot of other meetings."⁹⁰⁶

Podesta had provided a draft copy of the section discussing Mrs. Clinton to Maggie Williams because "there was going to be a public release of something that had Mrs. Clinton's

⁹⁰⁴ GJ 95-2 Exh. 68 at 9.

⁹⁰⁵ Podesta GJ 7/8/96 at 79-80. Podesta admitted they discussed the draft report with Mrs. Clinton's Chief of Staff Maggie Williams, but claimed not to recall if Williams suggested the change in language regarding Mrs. Clinton's contact with McLarty. *Id.* at 82-83. Williams admitted to reviewing the draft report discussing the possibility of contact between Mrs. Clinton and Harry Thomason, and lobbying Podesta (successfully, *see* White House Travel Office Management Review at 5) to take it out. Williams testified that "when I looked at the section that had Mrs. Clinton in it, he had said something, you know, 'How did Mrs. Clinton find out about this? Did she talk to Harry Thomason?' And I said, 'Well, you've told me that she had no recollection of talking to Harry Thomason. Do you know anybody who can say for sure that she talked to Harry Thomason? If not, I mean, you know, just don't put somebody in there if we don't [know] for sure. You just have to put she has no recollection of it.'" Williams GJ 7/30/96 at 62.

⁹⁰⁶ McLarty GJ 7/31/96 at 35-36; GJ 95-2 Exh. 68 at 9.

name in it, I, of course, wanted to see it and review it."⁹⁰⁷ McLarty also said that "Ms. Williams did participate in one or two meetings we had regarding the travel report . . . about the last week or so before the report was complete."⁹⁰⁸ Concerning the report, Williams said, "[I]t's possible I could have changed it. I mean, I certainly, if I wanted to change it, could have changed it."⁹⁰⁹ Williams said that in her view, changing the word "concerns" to "inquired about" was justified because Mrs. Clinton's statement was not "in quotes," and hence, it is "not necessarily what she told them. It is an interpretation."⁹¹⁰ Just like Podesta, Williams argued that this did not result in any change of meaning: "A change in meaning? Who said it was a change in meaning? It was a change in language."⁹¹¹

ii. The May 16 Discussion.

The final version of the Management Review does not mention McLarty's second discussion with Mrs. Clinton on May 16.⁹¹² McLarty explained that this might have occurred because of his lack of memory about the conversation. He also stated that the final decision on

⁹⁰⁷ M. Williams GJ 7/30/96 at 34. Podesta admitted he may have given her at least the draft pages referring to Mrs. Clinton, and that he "got her views back," although he claimed not to be able to recall if she had written "her views" on the pages. Podesta 7/18/96 at 105-06.

⁹⁰⁸ McLarty House Depo. 7/12/96 at 103-04; McLarty GJ 7/31/96 at 179 ("I think Maggie was in one meeting" to discuss the final report).

⁹⁰⁹ M. Williams GJ 7/30/96 at 36.

⁹¹⁰ Id. at 35-36.

⁹¹¹ Id. at 41.

⁹¹² McLarty GJ 7/31/96 at 96. During this conversation McLarty briefed Mrs. Clinton on the Peat Marwick review findings, and she told him this was a serious matter and a decision should be made quickly. Id. at 81-82.

whether to include a conversation between the First Lady and Chief of Staff about the Travel Office was up to Podesta.⁹¹³

McLarty agreed that the May 16 conversation -- and the reference to Mrs. Clinton's statement that it was a "serious matter" -- had been omitted entirely from the White House Travel Office Management Review, and that he did not "know why it's not in there."⁹¹⁴ McLarty said, "I am positive that I made it clear to Mr. Podesta during our discussion [for the Management Review] that the First Lady had discussed this matter with me and that she took it as a very serious matter," though McLarty said he was not sure if he told Podesta that this was communicated in two separate conversations.⁹¹⁵ He next claimed, "I don't remember whether I specifically recalled the May 16 conversation with Mrs. Clinton at the time this report was published or not."⁹¹⁶

McLarty said that his memory of the conversation was prompted when "a question came up in the [July 2, 1993] press briefing . . . and I did respond about the May 16th meeting . . . an afterthought. The question triggered my memory, and I remembered this particular meeting."⁹¹⁷ Asked to confirm whether he was "suggesting to us that it's possible . . . that you forgot about the May 16th conversation during the month of June, and then remembered it in the month of July after the management report was published," McLarty said, "Well, I think it's possible."⁹¹⁸

⁹¹³ Id. at 95-99.

⁹¹⁴ Id. at 96-97.

⁹¹⁵ Id. at 109.

⁹¹⁶ Id. at 97-98.

⁹¹⁷ Id. at 98.

⁹¹⁸ Id. at 100-01.

b. The Report Described Foster's Conversations With Mrs. Clinton.

The final version of the Management Report contained the following language regarding Foster's May 13 conversation with Mrs. Clinton relating to the Travel Office:

That afternoon, before Foster talked to Watkins about Peat Marwick, Foster went to see the First Lady on a matter unrelated to the Travel Office. The First Lady told Foster that she had heard about problems in the Travel Office. Foster replied that Kennedy was looking into it.⁹¹⁹

When Podesta was questioned about Mrs. Clinton's response to Foster's statements, he replied, "I think that was a fairly complete description of the conversation."⁹²⁰

c. The Report Described Watkins's Conversations With Mrs. Clinton.

After interviewing Watkins three times (June 3, June 15, and June 30), Podesta and Stern included no reference to Watkins's description of Mrs. Clinton's comments in their Report.⁹²¹

When Podesta went back to interview both Mrs. Clinton and Watkins about what each had said during their phone conversation, he did not confront either of them with the specific allegations contained in Watkins's June 2, 1993 note.⁹²² Podesta simply asked them both to describe the conversation, and when Watkins failed to recount it according to the terms stated in the note, Podesta and Stern agreed they could disregard note because it was more a reflection of Watkins "hot-headed" state of mind than an actual factual record.⁹²³ This conclusion was based on the content of the notes that referred to the White House Travel Office Management Review as an

⁹¹⁹ GJ 95-2 Exh. 68 at 9.

⁹²⁰ Podesta GJ 7/18/96 at 85.

⁹²¹ Stern GJ 7/10/96 at 200, 204, 207; Podesta GJ 7/18/96 at 89-92.

⁹²² Podesta GJ 7/18/96 at 37-39.

⁹²³ Id. at 37-39, 42; Stern GJ 7/10/96 at 197-200.

"inquisition" and asked "Is the real story to Be Told?"⁹²⁴ As a result, the White House Travel Office Management Review only refers generally to the moment when Watkins updated Mrs. Clinton on the Peat Marwick review and the Travel Office's status.

The Management Report recounted the May 14 telephone conversation between Mrs. Clinton and Watkins as follows:

Beginning Friday and over the weekend, Watkins received telephone updates on the progress of the Peat Marwick review. Late Friday afternoon, he received an update from Patsy Thomasson on the progress of the Peat Marwick review. He then talked to Foster about the review. Foster, in light of the First Lady's inquiry the previous day, suggested Watkins update her. Watkins then called the First Lady and updated her about the situation in the Travel Office.⁹²⁵

When asked about what was described by Mrs. Clinton and Watkins during this conversation, Podesta testified, "I think Mr. Watkins did most of the talking [in the conversation]."⁹²⁶ Podesta then added:

Q: What did she say to him?

A: I'm telling you the substance of my recollection of her conversation.

Q: And did you ask her, well, okay, he briefed you on it and said he was going to take appropriate action, what did you say to him?

A: That is my -- I told you my total recollection of what the conversation was about.

Q: So you have no idea what she said to him?

A: As I said, I have told you the whole conversation, as I recall it.

⁹²⁴ Watkins's notes 6/2/93, OIC Bates No. 542-DC-00001499 (capitalization in original).

⁹²⁵ GJ 95-2 Exh. 68 at 10.

⁹²⁶ Podesta GJ 7/18/96 at 89-90.

Q: So the answer to my question is, yes, you have no idea what the First Lady said to David Watkins during that telephone conversation because you didn't ask?

A: You can draw that conclusion. I have told you what I remember.

Q: Well, tell me what the First Lady said to David Watkins during the telephone conversation?

A: I told you what the First Lady said to me about that conversation.

Q: And she didn't tell you what she said to David Watkins; is that correct?

A: I don't recall that she said anything specific about what she said to Watkins.

Q: So you don't know what she said?

A: I have testified about what my knowledge is.

Q: Well, do you know what she said to David Watkins during the telephone conversation?

A: I told you what she told me about the conversation.⁹²⁷

Stern's notes of Mrs. Clinton's interview contain no information regarding the May 14 telephone conversation between Mrs. Clinton and Watkins other than, "DW called HRC."⁹²⁸

4. While Some White House Employees Were Reprimanded, Nussbaum and Foster Were Not.

In the end, the draft Review recommended the reprimand of Kennedy, Watkins, Cornelius, Eller, and Thomason.⁹²⁹ Nussbaum testified that when he learned Kennedy was to be

⁹²⁷ Id. at 90-92.

⁹²⁸ Stern's notes of interview with Hillary Rodham Clinton 6/30/93, OIC Bates No. 542-DC-00018265.

⁹²⁹ Draft of White House Travel Office Management Review 6/30/93, OIC Bates No. 542-DC-00018561 at 18576-18577, 18579-18582; White House Travel Office Management Review at 17, 19-21 (July 2, 1993) (final published version). When the White House Travel Office Management Review was released, McLarty announced, "I have issued reprimands to

censured, he went to McLarty and insisted "that Vince Foster be censured, who is Kennedy's immediate superior, and I be censured, as Vince Foster's immediate superior."⁹³⁰ Nussbaum said that McLarty agreed and told him, "'if we censure Kennedy, you will all be censured.'"⁹³¹ The final version of the Management Review, however, was not altered and Nussbaum and Foster were not reprimanded.

When he inquired, Nussbaum said that he was told by Foster that "'Mack talked to some people, and they decided that you're too important -- too high in the White House -- and I'm too important also in the White House, you know, and therefore, it wouldn't be good for the White House if they censured you or they censured me.'"⁹³²

David Watkins, William Kennedy, Jeff Eller and Catherine Cornelius. And Ms. Cornelius will be reassigned to another position which has not yet been determined." Statement by Chief of Staff "Mack" McLarty, White House Press Briefing (July 2, 1993). Cornelius stated, "I learned on television that I was going to be reprimanded," but that "[n]o one told me in person." Cornelius GJ 7/25/96 at 195-96. "They did tell me that they were going to reassign me . . . no one told me that I was in trouble or I was going to get reprimanded." Id. Prior to the release of the report Watkins was contacted by Panetta and McLarty, who informed him that the White House Travel Office Management Review was done and that he would be "reprimanded [because] he was a central figure. [It] w[ou]ld go in his personnel file," causing Watkins to joke that he "[could]n't work for the gov[ernment] anymore," which angered Director of the Office of Management and Budget Leon Panetta. Watkins Int. 11/22/96 at 34. Even before the report was released Watkins felt that the White House Travel Office Management Review "was [a] bunch of BS." Id. at 33. The word "reprimand," is not used in the White House Travel Office Management Review, nor is there any other reference that any kind of tangible disciplinary employment action, such as reduction in pay or title/seniority, was or would be taken against the four individuals singled out by McLarty as having been "reprimanded."

⁹³⁰ Nussbaum GJ 7/16/96 at 29.

⁹³¹ Id. at 30.

⁹³² Id. at 31. Mrs. Clinton was asked: "Do you know who decided who should be reprimanded within the White House staff as a result of that [the Travel Office] matter?" to which she responded: "No, I do not." H. Clinton Depo. 7/22/95 at 13. She was also asked: "Did you ever have a conversation on that subject matter providing input as to who should or should not be reprimanded?" and again she said: "No, I did not." Id. Watkins told this Office that although McLarty had told him at 10:00 in the morning the day the management review was

F. Numerous Other Investigations Into Various Aspects of the Travel Office Firings Followed.

After the White House Travel Office Management Review, the FBI, the Treasury Department, the House Committee on Government Reform and Oversight, the Department of Justice's Office of Professional Responsibility, and the Government Accounting Office all conducted individual investigations. In addition, Billy Dale was tried, and acquitted on charges of embezzlement.

1. The FBI Internal Review and the Office of Professional Responsibility Inquiry.

On May 28, 1993, the FBI produced a report entitled, "An Internal Review Of FBI Contacts With The White House As Related To The Investigation Of The White House Travel Office." This report concluded that the FBI had not committed any wrongdoing in its contacts with the White House about the Travel Office.⁹³³

On July 28, 1993, then Deputy Attorney General Philip Heymann directed the Office of Professional Responsibility (OPR) to review the FBI's contacts with the White House about the Travel Office.⁹³⁴ The OPR submitted its report on March 18, 1994. The OPR interviewed

released that Foster would be among those reprimanded, along with Eller and him, at 1:00 that afternoon, reprimands were announced for Eller and him, but not Foster. Watkins Int. 6/13/00 at 2.

⁹³³ Action Memorandum from the FBI Director to the Attorney General (5/28/93).

⁹³⁴ When Kennedy was interviewed by the FBI regarding his FBI contacts in the days preceding the firings, Bernard Nussbaum was present at the interview, accompanied by Associate White House Counsels Clifford Sloan and Neil Eggleston. O'Brien GJ 4/29/97 at 7, 10-12. FBI Agent O'Brien said this was the only interview for which Mr. Nussbaum chose to be present. After Kennedy's interview was concluded, the FBI asked Nussbaum not to be present again. *Id.* at 10-11. O'Brien felt Nussbaum's presence impacted Kennedy's answers, "[a]nd there were times when . . . we'd ask a question from Mr. Kennedy and his eyes would roll over to Mr. Nussbaum before responding to us." *Id.* at 13.

numerous FBI, DOJ, and White House employees and concluded that the FBI "acted properly throughout its dealings with the White House regarding the Travel Office matter."⁹³⁵ The OPR Report noted that while the FBI agents who dealt with Kennedy on the Travel Office matter had differing recollections from Kennedy regarding whether he had invoked the White House's "highest levels," the report concluded that the FBI agents "all agree[d] that they did not interpret Kennedy's statements as threats or attempts by him to pressure them to respond to the factual situation in an inappropriate manner or in any way inconsistent with normal procedures."⁹³⁶

2. The Treasury Department and the IRS.

Shortly after the Travel Office firings became public, Internal Revenue Service agents conducted an audit of UltraAir and its principal officer Charles Caudle. Based on public reports that Associate White House Counsel William Kennedy had informed the FBI he was considering bringing in the IRS to investigate the Travel Office during the May 13-14 time period, the Treasury Department conducted a review of whether someone in the White House may have requested that the IRS take action against UltraAir.

The IRS Chief Inspector's Office, in a report dated June 11, 1993, concluded there was no evidence of any attempt by anyone outside the IRS to influence the UltraAir investigation.⁹³⁷ The investigation revealed that UltraAir originally came under IRS scrutiny in 1992 for failure to

⁹³⁵ DOJ/OPR Memorandum Report from OPR Counsel Michael E. Shaheen, Jr. to Acting Deputy Attorney General Jo Ann Harris at 93 (Mar. 18, 1994). This Office's investigation confirmed that conclusion. In addition, there is no evidence that the White House misused the FBI in the course of its review of the Travel Office. *Id.* at 69. Nevertheless, new procedures were implemented that require the White House staff to contact the Attorney General, Deputy Attorney General, or Associate Attorney General before involving the FBI in a criminal investigation. *Id.* at 69-70.

⁹³⁶ *Id.* at 92-93.

⁹³⁷ Office of Inspector General, Department of Treasury Report at 1-2 (March 31, 1994).

collect or pay excise tax on the company's business with the Travel Office. After May 19, 1993, when press reports mentioned possible kickbacks from charter companies to the Travel Office, the IRS unilaterally decided to expand its investigation of UltraAir.⁹³⁸

3. The Prosecution and Acquittal of Billy R. Dale.

The FBI opened a criminal investigation of the Travel Office shortly after the Travel Office employees were dismissed on May 19, 1993.⁹³⁹ During this time period, the FBI notified the Public Integrity Section of the Department of Justice about the Travel Office allegations.

⁹³⁸ This Office investigated and confirmed the IRS's conclusions based upon interviews and examination of the documentary evidence of the IRS officials involved in the audits of UltraAir and Charles Caudle. Questions regarding UltraAir's tax compliance status concerning certain excise taxes were brought to the IRS's attention in 1992 by UltraAir's own Chief Financial Officer. Hamblin Int. 1/19/00 at 1. UltraAir was soon working cooperatively with the IRS from that point forward. Hill Int. 1/18/00 at 1, 3. When UltraAir was mentioned in press coverage of the Travel Office incident in May 1993, the IRS agents already familiar with UltraAir recognized the name, and acted on their own initiative without any contact from William Kennedy or any other White House official. *Id.* at 2; Brown Int. 1/18/00 at 1. As a result of the IRS's audit, Charles Caudle received a \$5,000 tax refund. Caudle GJ 6/18/96 at 26.

This Office investigated the nature of contacts between Kennedy and then IRS Commissioner Margaret Milner Richardson, and determined that their contacts were insubstantial and of a social nature only. Richardson GJ 4/29/97 at 7-8. Richardson testified before the grand jury that "William Kennedy never communicated with me on any matter, other than the one I mentioned to you, which had to do with a process for making sure that tax checks were timely processed through the IRS." *Id.* at 12. After interviewing all persons with material evidence pertaining to this issue, this Office's investigation revealed no contrary evidence. *See* Williams Int. 1/18/00 (Thomas A. Williams, Chief, Examination Branch, IRS); Brown Int. 1/18/00 (Bruce W. Brown, Section Chief, Work Load Section, IRS); Hill Int. 1/18/00 (Anita Maria Hill, Revenue Agent, IRS); Hall Int. 1/18/00 (Darrell Lee Hall, Income Tax Specialist, IRS); Lumbreras Int. 1/27/00 (David Lumbreras, Industry Specialist for Air Transportation, Examination Division, IRS); Leonard Int. 1/27/00 (Lori Leonard, Associate Air Transportation Industry Specialist, IRS); Hamblin Int. 1/19/00 (Eddy Gilbert Hamblin, former CFO, Airline of the Americas/UltraAir).

⁹³⁹ FBI Special Agent David Bowie, the Supervisor of the White Collar Crime Squad at the Washington Metropolitan Field Office, testified he was satisfied as of May 15 that the information Catherine Cornelius had provided to the FBI established a predicate to open a criminal investigation. Bowie GJ 6/6/96 at 10-13.

Stuart Goldberg, Senior Litigation Counsel in the Public Integrity Section, coordinated the investigation which resulted in a recommendation on August 4, 1994 to prosecute Billy Dale for two counts of violation of 18 U.S.C. § 654 relating to the unlawful conversion of approximately \$68,000. The charges against Dale did not reflect the multiple allegations that Cornelius, Thomason, and Martens had made in April and May 1993.⁹⁴⁰ Dale was indicted on December 7, 1994.⁹⁴¹ After a trial lasting several weeks, Billy Dale was acquitted on November 16, 1995.⁹⁴²

4. GAO Review of the Travel Office Firings.

On July 2, 1993, Congress passed the Supplemental Appropriations Act of 1993, and required that the GAO "conduct a review of the action taken with respect to the White House Travel Office"⁹⁴³ The GAO subsequently reviewed several issues relating to the Travel Office, including the actions taken in the Spring of 1993, that led to the Travel Office firings.⁹⁴⁴

⁹⁴⁰ In his Prosecution Memorandum, Goldberg wrote, "We determined that there was little or no evidence to support the kinds of allegations that were made at the time of the termination." Dept. of Justice/Public Integrity Section Prosecution Memorandum at 1 (Aug. 10, 1994). He further wrote that "[t]he vast majority of the allegations we examined proved meritless." *Id.* at 8.

⁹⁴¹ Indictment, United States v. Dale, No. CR-94-469 (D.D.C. filed Dec. 7, 1994). Count One charged Dale with depositing approximately \$54,000 in checks from the Travel Office into his personal bank account from January 1988 through April 1991. Count Two charged Dale with the unlawful conversion of approximately \$14,000 in petty cash.

⁹⁴² Judgment of Acquittal, United States v. Dale, No. CR-94-469 (D.D.C. entered Nov. 16, 1995)(Hon. Gladys Kessler, presiding).

⁹⁴³ Supplemental Appropriations Act of 1993, Pub. L. 103-50, 107 Stat. 241.

⁹⁴⁴ GAO White House Travel Office Report May 1994, OIC Bates No. 542-DC-00023261 at 23263.

Eight months later, the GAO completed its investigation and published its report.⁹⁴⁵ The GAO concluded that the White House had legal authority to terminate the Travel Office employees without cause on May 19, 1993⁹⁴⁶ because their appointments were at the pleasure of the President. However, the GAO also concluded that Harry Thomason, Catherine Cornelius, and Darnell Martens, individuals who had potential personal or business interests in the Travel Office operations, may have influenced the management decision to fire the employees.⁹⁴⁷ The report also related that Watkins had told GAO he was "urged" by Mrs. Clinton to fire the Travel Office employees.⁹⁴⁸

5. Investigation By the House Committee on Government Reform and Oversight.

In late 1994, Congressman William F. Clinger Jr., Chairman of the House Committee on Government Reform and Oversight, announced hearings on the Travel Office firings. During 1995, Chairman Clinger's committee staff conducted interviews and collected documents. In October 1995, the Clinger Committee held hearings to determine if the previous reports of the

⁹⁴⁵ Kingsbury GJ 6/27/96 at 8; GAO Report on White House Travel Office May 1994, OIC Bates No. 542-DC-00023261.

⁹⁴⁶ Kingsbury GJ 6/27/96 at 8; GAO Report on White House Travel Office May 1994, OIC Bates No. 542-DC-00023261 at 23265.

⁹⁴⁷ GAO Report on White House Travel Office May 1994, OIC Bates No. 542-DC-00023261 at 23265-23266.

⁹⁴⁸ United States General Accounting Office Report to Congress Re: White House Travel Office Operations at 53 (May 1994) ("she urged that action be taken to get 'our people' into the Travel Office"). Watkins resigned from his position at the White House on June 17, 1994, after he used a presidential helicopter to scout out a golf course near Camp David in Maryland for use by the President at taxpayer's expense of \$13,679. Watkins GJ 2/28/95 at 103-110. A photographer from a local paper took a picture of Watkins leaving on the helicopter, and the issue was picked up by a member of Congress when the picture ran in the paper. Watkins GJ 2/28/95 at 106. Watkins said, "this whole thing was set up by the military office. They called me. I really didn't want to go that day." Watkins GJ 2/28/95 at 105-06.

Department of Justice, FBI, and the GAO answered all questions and concerns regarding the Travel Office matter, or whether additional hearings were necessary. These hearings revealed that previous investigations, particularly the GAO investigation, were hobbled by the White House's lack of cooperation. As 1995 came to a close, the Clinger Committee planned hearings on several issues focusing on the roles of David Watkins and Harry Thomason throughout the Travel Office matter.

Thereafter, the Committee conducted additional investigation necessitated by the belated discovery of the Watkins Memorandum in January 1996. On September 26, 1996, the Clinger Committee issued its Travel Office firings report.⁹⁴⁹ The Committee deposed seventy-two witnesses, informally interviewed twenty-three witnesses, and reviewed approximately 58,000 documents from the White House and another 45,000 documents from the Justice Department, Treasury Department, and other agencies.⁹⁵⁰ The Committee Report found the following:

- * Plans to fire the Travel Office employees . . . were in place from the earliest days of the Clinton Administration;⁹⁵¹
- * Harry Thomason . . . instigated the firing of the Travel Office employees;⁹⁵²
- * Harry Thomason abused his official status and White House access at a time when he had a financial stake in the Travel Office business;⁹⁵³
- * The White House . . . misused and manipulated the FBI to further their political agenda;⁹⁵⁴

⁹⁴⁹ H.R. Rep. No. 104-849 (1996).

⁹⁵⁰ Id. at 9.

⁹⁵¹ Id. at 11.

⁹⁵² Id.

⁹⁵³ Id. at 13.

- * Mrs. Clinton . . . asserted pressure on senior White House staff to fire the Travel Office employees;⁹⁵⁵
- * The White House engaged in a conspiracy of silence of the true story behind the firings . . . [f]or damage control purposes;⁹⁵⁶
- * The Internal White House Management Review . . . omitted incriminating information about the President, Mrs. Clinton and Harry Thomason.⁹⁵⁷
- * The White House's obstruction of the review of Vince Foster's documents was due in part to concerns about Travelgate documents in Foster's custody;⁹⁵⁸ and
- * The White House . . . obstruct[ed] . . . investigations into the Travel Office [matter].⁹⁵⁹

The House Committee Report contained a strong dissent from the minority. They stated:

- * The Majority has resorted to making baseless allegations transparently designed for partisan gain in the midst of a Presidential election⁹⁶⁰
- * These baseless allegations demonstrate that this report is nothing more than a partisan witch hunt intended to embarrass a Democratic Administration shortly before the Presidential election.⁹⁶¹

⁹⁵⁴ Id. at 14.

⁹⁵⁵ Id. at 15.

⁹⁵⁶ Id. at 18.

⁹⁵⁷ Id. at 19.

⁹⁵⁸ Id. at 21.

⁹⁵⁹ Id. at 24.

⁹⁶⁰ Id. at 858.

⁹⁶¹ Id. at 859.

VI. ANALYSIS OF POTENTIAL STATUTORY VIOLATIONS

The jurisdictional mandates presented the Independent Counsel with the central question of whether William David Watkins or Hillary Rodham Clinton committed any violations of federal criminal law in connection with the interviews or statements before the General Accounting Office, the United States House of Representatives, and the Office of the Independent Counsel during the course of their respective investigations into the firing of the Travel Office personnel. Thus, the Office was tasked to determine whether Mr. Watkins or Mrs. Clinton knowingly made false material statements to those investigative bodies or knowingly engaged in a scheme to conceal the truth concerning their conduct from those investigators. Such a scheme or false statements, if proven, might have constituted violations of federal criminal law, including provisions relating to perjury (18 U.S.C. § 1621), false statements (18 U.S.C. § 1001), and obstruction of justice (18 U.S.C. § 1503).

Perjury Under 18 U.S.C. § 1621

18 U.S.C. § 1621 provides in pertinent part:

Whoever -- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered that he will testify, . . . [or] depose . . . truly, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; . . . is guilty of perjury.

Thus, to establish the basic elements of the crime of perjury, the government must show that (1) the defendant took an oath authorized by law; (2) the oath was taken before a competent tribunal, officer, or person, and (3) the defendant then willfully made false statements as to material facts.⁹⁶² In this case, this Office would be required to demonstrate that David Watkins or Mrs.

⁹⁶² United States v. Hvass, 355 U.S. 570, 574 (1958); see also United States v. Dean, 55 F.3d 640, 659 (D.C. Cir. 1995), cert. denied, 116 S. Ct. 1288 (1996); United States v. Dunnigan, 507 U.S. 87, 94 (1993) (perjury occurs when a witness "gives false testimony concerning a

Clinton willfully made false statements under oath as to Mrs. Clinton's involvement in the Travel Office firings.

False Statements Under 18 U.S.C. § 1001

At the relevant time period of the allegations at issue here, 18 U.S.C. § 1001 prohibited:

In any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsif[ying], conceal[ing], or cover[ing] up by any trick, scheme, or device a material fact, or mak[ing] any false, fictitious or fraudulent statements or representations.

To establish a violation of the false statements statute the government must prove beyond a reasonable doubt, as in the case of perjury, that a statement involved "actual falsity."⁹⁶³ The government must also prove beyond a reasonable doubt "that the statement was made with knowledge of its falsity."⁹⁶⁴ In this case, the United States would be required to prove beyond a reasonable doubt that the statements of David Watkins and Mrs. Clinton regarding Mrs. Clinton's involvement in the Travel Office firings were knowingly and materially false.

Obstruction of Justice Under 18 U.S.C. § 1503

A violation of 18 U.S.C. § 1503 is committed whenever a person:

corruptly . . . endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, . . . or corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice

material matter with the willful intent to provide false testimony").

⁹⁶³ United States v. Diogo, 320 F.2d 898, 902 (2d Cir. 1963); see also United States v. Milton, 8 F.3d 39, 45 (D.C. Cir. 1993), cert. denied, 115 S. Ct. 299 (1994).

⁹⁶⁴ United States v. Yermian, 468 U.S. 63, 64 (1984); see also United States v. Rodgers, 466 U.S. 475, 483 (1984) ("Section 1001 only applies to those who 'knowingly and willfully' lie to the Government.").

In order to prove that a defendant has obstructed justice, the government must prove: (1) the defendant engaged or endeavored to engage in conduct or behavior;⁹⁶⁵ (2) the defendant engaged in such corrupt behavior and with specific intent; and (3) the defendant's intent was to impede the due administration of justice.⁹⁶⁶ There must also be judicial proceedings pending at the time of the defendant's conduct, such as a grand jury investigation, and the defendant must have knowledge of that proceeding.⁹⁶⁷ In light of the evidence in this case regarding the failure to produce the Watkins Memorandum until January 1996, this Office would be required to prove beyond a reasonable doubt that David Watkins or others withheld the documents knowing that they were responsive to a Congressional or a grand jury investigation with the intent to obstruct those proceedings.

**The Principles of Federal Prosecution
as Applied to the Conduct of Mr. Watkins and Mrs. Clinton**

Prior to initiating a prosecution for any of these offenses, a prosecutor must believe that "the admissible evidence will probably be sufficient to obtain and sustain a conviction."⁹⁶⁸

⁹⁶⁵ Section 1503 "requires only proof of an endeavor, irrespective of its success, and makes that act a crime if the endeavor is a corrupt one." United States v. Baker, 611 F.2d 964, 967 (4th Cir. 1979); see also United States v. Friedland, 600 F.2d 919, 930 (3d Cir. 1981) ("endeavoring to obstruct justice . . . is based on an attempt to induce the rendering of false testimony"), cert. denied, 456 U.S. 989 (1982).

⁹⁶⁶ United States v. Bridges, 717 F.2d 1444, 1449 n.30 (D.C. Cir. 1983), cert. denied, 465 U.S. 1036 (1984); see also Pyramid Securities Ltd. v. IB Resolution, 924 F.2d 1114, 1119 (D.C. Cir.), cert. denied, 502 U.S. 822 (1991).

⁹⁶⁷ United States v. Aguilar, 515 U.S. 593, 601 (S. Ct. 1995); Pyramid Securities Ltd. v. IB Resolution, 924 F.2d 1114, 1119 (D.C. Cir.), cert. denied, 502 U.S. 822 (1991); United States v. Smith, 729 F. Supp. 1380, 1382 (D.D.C. 1990).

⁹⁶⁸ United States Attorneys' Manual, Principles of Federal Prosecution, § 9-27.220(A).

Moreover, no prosecution should be initiated against any person "unless the government believes that the person probably will be found guilty by an unbiased trier of fact."⁹⁶⁹

Concerning Mr. Watkins, the Independent Counsel has concluded that the evidence is insufficient to obtain and sustain a conviction. The evidence is insufficient to prove to a jury beyond a reasonable doubt that any of Watkins's statements to the GAO, Congress, or this Office were materially false, that he was a knowing participant in a scheme to conceal or cover up by trick, scheme, or device any material facts relating to the Travel Office firings from those investigations, or that he knowingly obstructed the due administration of justice. Accordingly, this Office has determined not to seek an indictment of Mr. Watkins, and the investigation of Mr. Watkins's conduct in this matter is now closed.

Concerning Mrs. Clinton, the Independent Counsel has concluded that Mrs. Clinton had a role and input in the decision to fire the Travel Office employees. Accordingly, the Independent Counsel has concluded that a significant aspect on this subject of Mrs. Clinton's sworn deposition testimony before this Office was factually false. The Independent Counsel has, however, also concluded, that the admissible evidence is insufficient to establish beyond a reasonable doubt to the satisfaction of a jury that those false statements were made with the requisite criminal intent. The Independent Counsel has decided that a jury would not conclude that Mrs. Clinton's statements were knowingly false and that the "admissible evidence probably will [not] be sufficient to obtain and sustain a conviction."⁹⁷⁰ Accordingly, the Independent Counsel has determined not to seek an indictment of Mrs. Clinton, and the investigation of Mrs. Clinton's conduct in this matter is now closed.

⁹⁶⁹ United States Attorneys' Manual, Principles of Federal Prosecution, § 9-27.220(B).

⁹⁷⁰ United States Attorneys' Manual, Principles of Federal Prosecution, § 9-27.220(A).

A. The Evidence is Insufficient to Prove Beyond a Reasonable Doubt That David Watkins's Statements to the GAO, Congress, or This Office Were False.

Mr. Watkins gave seven separate statements to investigative bodies concerning the Travel Office firings: 1) an FBI interview on August 8, 1993; 2) a GAO interview on December 9, 1993; 3) an OIC interview on June 22, 1994; 4) grand jury testimony on February 28, 1995; 5) deposition testimony before the Senate Committee on Banking, Housing, and Urban Affairs on July 11, 1995; 6) an OIC interview on January 15, 1996; and 7) testimony before the House Committee on Government Reform and Oversight on January 17, 1996.⁹⁷¹ With respect to each of these statements, the evidence is insufficient to prove beyond a reasonable doubt that Mr. Watkins knowingly provide false testimony.

Beginning with his first statement to the FBI, Mr. Watkins disclosed that he had been advised by Harry Thomason of Mrs. Clinton's concerns relating to the Travel Office. He also

⁹⁷¹ Watkins also gave a statement to the White House Travel Office Management Review where, according to Watkins in the second draft of his memo, he deliberately provided incomplete and misleading information. See GJ 95-2 Exh. 69-E at 1 (calling the memo "my first attempt to be sure the record is straight, something I have not done in previous conversations with investigators -- where I have been as protective and vague as possible."). Watkins stated that his reference to investigators was limited solely to the White House Travel Office Management Review. See Watkins Int. 11/22/96 at 41.

Neither Watkins, nor anyone else, can be prosecuted under the then applicable version of 18 U.S.C. § 1001 for false statements made to Podesta and Stern in the course of their interviews for the White House Travel Office Management Review. See United States v. Espy, 145 F.3d 1369, 1372-73 (D.C. Cir. 1998) (false statements to "the President's Chief of Staff and Counsel" do not violate § 1001, because the "Executive Office of the President" is neither a "department" nor "agency"). The limitations of the White House Management Review, as described in this Report, also render prosecution inappropriate.

On October 11, 1996, Congress amended the false statements statute to cover the entire Executive Branch, which would include the Executive Office of the President. See The False Statements Accountability Act of 1996, Pub.L. 104-292, 110 Stat. 345 (Oct. 11, 1996). The ex post facto clause of the U.S. Constitution, Article I, sec. 9, however, precludes the prosecution of an offense under the new law for conduct occurring prior to October 11, 1996.

disclosed that he felt considerable pressure to act and that he knew that the Travel Office issue was "in the forefront of Hillary Clinton's mind and action needed to be taken."⁹⁷² Mr. Watkins has also consistently stated that although he felt pressured by Mrs. Clinton to fire the Travel Office employees, it was his decision and Mrs. Clinton never directly ordered him to fire them.⁹⁷³ As Mr. Watkins summarized in his testimony before the House Committee, "I am responsible for the firings of the White House Travel Office people [T]hey did not direct me to fire them. Was there pressure? Did I feel the pressure and desires and wishes of others? Yes, I did."⁹⁷⁴

In addition, the evidence also establishes beyond a reasonable doubt that Mr. Watkins was pressured to act expeditiously in handling the Travel Office allegations. Much of that pressure came from the First Lady. Mr. Watkins, however, had only one direct contact with Mrs. Clinton in which the Travel Office was discussed. Watkins's notes of that conversation reflect that Mrs. Clinton said: "[W]e need those people out. We need our people in. We need the slots."⁹⁷⁵ While a jury could understand those words, on their own, to be an order to fire the Travel Office employees or an effort to apply pressure to Watkins, the evidence here is insufficient to support such a prosecution, given that Watkins himself expressly denied that he considered those words (assuming that they were actually spoken) as an order to fire the Travel

⁹⁷² Watkins FBI Int. 8/10/93 at 5.

⁹⁷³ Watkins GAO Int. 12/9/93 at 17 ("Mr. Watkins did not consider the First Lady to be exerting pressure on him."); Watkins FBI Int. 6/22/94 at 2 ("It was Watkins's decision to fire [the Travel Office employees]."); Watkins FBI Int. 1/15/96 at 10 (While "Hillary Clinton was a 'factor' in the decision to fire the Travel Office staff," it was Watkins's decision). Nevertheless, Watkins admitted his belief that he would have been fired had he not fired the Travel Office employees. Watkins Int. 6/13/00 at 6.

⁹⁷⁴ White House Travel Office--Day Two: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 108-09 (1996)(testimony of David Watkins).

⁹⁷⁵ Watkins's notes 6/2/93, OIC Bates No. 542-DC-00001499.

Office employees. Rather, the evidence establishes that pressure was placed upon Watkins by other senior White House officials and advisors -- Harry Thomason, Vince Foster, and Mack McLarty -- who acted as intermediaries, and conveyed to Watkins with considerable urgency the nature and extent of Mrs. Clinton's concerns about the Travel Office.⁹⁷⁶

Thus, the evidence is insufficient to prove to a jury beyond a reasonable doubt that any of Watkins's statements made in his Independent Counsel interviews on June 22, 1994, and January 15, 1996, or in his grand jury testimony on February 28, 1995, were false. Mr. Watkins told the OIC and the grand jury that although he knew of Mrs. Clinton's interest in the Travel Office, it had been his decision to fire the employees. He also disclosed the May 14, 1993 telephone conversation with Mrs. Clinton where she spoke of getting "our people in there."⁹⁷⁷

Similarly, there is insufficient evidence to establish that Watkins's July 11, 1995 statements in his deposition before the Senate Committee on Banking, Housing & Urban Affairs were false. He testified simply that the decision to fire the Travel Office employees was his

⁹⁷⁶ For example, according to notes dictated to assistant Matt Moore by Watkins, on May 17, McLarty advised Watkins that he had had dinner with the President (TP) and the First Lady, and the Travel Office matter was "high on TC's [the First Lady's] radar screen." GJ 95-2 Exh. 69-A at 4. McLarty's message and tone indicate that Watkins could count on his full support and concurrence in the decision to fire the Travel Office staff. McLarty was relieved when Watkins decided to fire the employees because, if Watkins did not take action, "there would be hell to pay." *Id.* Matt Moore testified that he believed Watkins was saying there would an enormous problem with the First Lady if the Travel Office staff was not fired. Moore GJ 6/27/96 at 49.

⁹⁷⁷ Watkins GJ 2/28/95 at 51-53, 56, 58, 90-91; Watkins FBI Int. 8/10/93 at 4-5 (Hillary Clinton told David Watkins during their conversation on May 14, 1993 that "action needed to be taken immediately" to ensure that "those not friendly with the Administration were removed and replaced with trustworthy individuals."); Watkins FBI Int. 1/15/96 at 7 (During the May 14, 1993 telephone conversation, Hillary Clinton stated to David Watkins, "'We need to get them out and our people in.'"); Watkins Int. 11/22/96 at 23-24 (Hillary Clinton told David Watkins during their May 14, 1993 telephone conversation that "mistakes were made where our people [were] not in early on.").

"decision with the concurrence of the Chief of Staff."⁹⁷⁸ The evidence of pressure from Mrs. Clinton is insufficient to establish that Watkins lied when he testified that he made the decision to fire the Travel Office employees.

This Office has also conducted an exhaustive review of Watkins's statements, in light the various drafts of the Watkins Memorandum, and concluded that the evidence is insufficient to establish that Watkins committed perjury or any other federal crimes during his testimony before the House Committee. In particular, Watkins's testimony about whether and to what extent he was "pressured" by Mrs. Clinton to fire the Travel Office employees substantially tracks the text of his draft memoranda.⁹⁷⁹ Indeed, although the evidence plainly demonstrates that Watkins felt pressure from Mrs. Clinton, later versions of the Watkins Memorandum and his testimony that he did not feel pressured in his one direct conversation with her would be evidence that, at least in his mind, Mrs. Clinton was not aware that he felt pressure from her through others. Thus, in material respects, his testimony before the House Committee cannot be shown to be knowingly false.

For similar reasons, the evidence that Mr. Watkins misrepresented to the GAO that he "did not consider the First Lady to be exerting pressure on him"⁹⁸⁰ is inconclusive and

⁹⁷⁸ Deposition Before Senate Comm. on Banking, Housing and Urban Affairs, 104th Cong., 21 (1995)(testimony of David Watkins).

⁹⁷⁹ See, e.g., White House Travel Office--Day Two: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 121-22 (1996)("I felt intense pressure to act very forcefully and directly I felt there was a lot of internal pressure on me") (testimony of David Watkins in response to questions by Chairman William F. Clinger, Jr.).

⁹⁸⁰ Letter from GAO General Counsel Robert P. Murphy to Chairman William F. Clinger, Jr. (January 30, 1996) (emphasis supplied). The letter also alleged two additional false statements by Mr. Watkins: 1) that the Peat Marwick report was the reason for his decision to fire the Travel Office employees; and 2) that the First Lady's comment about bringing in "our people" did not apply to World Wide Travel. The evidence does not support a conclusion that

insufficient to prove that his statement was knowingly false beyond a reasonable doubt.⁹⁸¹ The evidence simply does not support a conclusion regarding his state of mind -- i.e., whether he considered Mrs. Clinton to be exerting pressure.

And, according to one person who interviewed Mr. Watkins for the GAO, Mr. Watkins admitted during the interview that Mrs. Clinton said: "She wanted to have, quote, our people in the Travel Office."⁹⁸² Mr. Watkins's statement that Mrs. Clinton expressed a specific desire regarding the Travel Office staff is inconsistent with the conclusion that Watkins's statement, in the same interview, that Mrs. Clinton did not exert pressure was deliberately and willfully false.

In any event, the interviewers' handwritten notes are also inconclusive. The summary contained in the GAO interviewers' final report -- that Watkins "did not consider the First Lady to be exerting pressure on him" -- is supported by contemporaneous notes taken by one interviewer. Those notes contain the phrase "no pressure" as used by Watkins to describe his discussions with Mrs. Clinton. However, contemporaneous notes of the interview taken by another interviewer are less clear. They contain the phrase: "didn't consider pressure from FL." This phrase could be construed to reflect the statement that although Mr. Watkins felt pressure from the First Lady, it did not influence his decision. In light of these ambiguities, the GAO investigators' testimony would, in the end, be insufficient.

either of these statements was demonstrably false.

⁹⁸¹ Watkins stated that if he had been asked if he believed pressure was coming from Mrs. Clinton he would have answered "yes." See Watkins Int. 11/22/96 at 45. However, when asked if Mrs. Clinton exerted pressure on him, he said he "tried" to answer the question literally and truthfully by responding, "no." Id.

⁹⁸² Homan GJ 6/27/96 at 8.

Finally, attributing a statement to Watkins that he felt "no pressure" from the First Lady would be inconsistent with the numerous other statements made by Mr. Watkins in which he readily acknowledged feeling pressure indirectly from the First Lady. Any prosecution of Mr. Watkins would have to account for why Mr. Watkins would readily make statements to the Office of Independent Counsel and the FBI (in the case of the FBI, before his GAO interview) acknowledging the effects of Mrs. Clinton's actions, but falsely deny the existence of pressure in statements made to the General Accounting Office. Absent a plausible motive for such a course of conduct, the Independent Counsel has concluded in the exercise of his discretion that no prosecution is warranted and that Mr. Watkins, with the filing of this Report, is discharged from all criminal liability for alleged violations of federal criminal law within this Office's jurisdiction in the Travel Office matter.⁹⁸³

⁹⁸³ There is also a significant legal barrier to initiation of any criminal prosecution based upon false statements allegedly made to the GAO. The GAO is an arm of Congress, independent of the executive branch. See 31 U.S.C. § 702 (the GAO is "an instrumentality of the United States Government independent of the executive departments"); Bowsher v. Synar, 478 U.S. 714, 730-31 (1986) (finding that Congress established the GAO "because it believed that it 'needed an officer, responsible to it alone,'" that "Congress has consistently viewed the Comptroller General as an officer of the Legislative Branch," and that "the Comptrollers General have also viewed themselves as part of the Legislative Branch"). A prosecution for a violation of 18 U.S.C. § 1001 (as in effect at the time of Watkins's statements to GAO) for making a false statement would therefore be barred. See Oakar v. United States, 111 F.3d 146, 153 (D.C. Cir. 1997), (holding that the decision in Hubbard v. United States, 514 U.S. 695 (1995) barred prosecution for false statements to Congress under 18 U.S.C. § 1001). Congress subsequently amended section 1001 to cover false statements to Congress. See also supra at n. 971 (regarding ex post facto clause of the U.S. Constitution).

B. The Evidence is Insufficient to Prove Beyond a Reasonable Doubt That Mrs. Clinton Knowingly Made False Statements.

Two aspects of Mrs. Clinton's testimony warrant analysis: 1) Mrs. Clinton's testimony about whether she ordered or directed the Travel Office firings; and 2) Mrs. Clinton's testimony concerning her "role" or "input" in the decision to fire the Travel Office employees.⁹⁸⁴

The Independent Counsel has concluded that while Watkins's notes reflecting Mrs. Clinton's words -- "[W]e need those people out. We need our people in. We need the slots."⁹⁸⁵ -- could be construed as an order to fire the Travel Office employees, the evidence is nonetheless insufficient to prove beyond a reasonable doubt that Mrs. Clinton both said those words and that those words were intended to be such an order. Watkins would not testify that he understood those words to be such an order. The Independent Counsel has determined that Mrs. Clinton did play a role and have input in the decision to fire the Travel Office employees and that her testimony to the contrary was factually false. Despite that conclusion, the Independent Counsel believes that the evidence is insufficient to establish that Mrs. Clinton's statements regarding her role or input in the decision were knowingly false. Accordingly, the Independent Counsel has

⁹⁸⁴ H. Clinton Depo. 7/22/95 at 12; see also Statements of Mrs. Clinton to GAO and the House Committee, Section IV(B), supra. The Office examined one other aspect of Mrs. Clinton's testimony and determined that there was insufficient evidence to warrant prosecution. Mrs. Clinton testified that she was unable to recall the details of her discussions relating to the Travel Office matter with Thomason, Foster, and Watkins. H. Clinton Depo. 7/22/95 at 10-13. Proving that her testimony regarding her inability to recall the details of these brief conversations was false would be extremely difficult. From all evidence, Mrs. Clinton's conversations with Watkins, Foster, Thomason, and McLarty about the Travel Office between May 10 and May 19, though numerous, were not lengthy. Under the circumstances, this Office could not prove beyond a reasonable doubt that she did recall the details of these short conversations on a topic that was not within her primary area of responsibility. Conversely, the fact that these conversations occurred (and that all involved recall their general content) bears more appropriately on the principal factual question: whether Mrs. Clinton had a role or input in the Travel Office firings.

⁹⁸⁵ Watkins's notes 6/2/93, OIC Bates No. 542-DC-00001499.

exercised his discretion to decline prosecution and to discharge Mrs. Clinton from all criminal liability for alleged violations of federal criminal law within this Office's jurisdiction in the Travel Office matter.

1. Ordering the Firings.

Mrs. Clinton has repeatedly testified that she did not order the Travel Office firings or direct Mr. Watkins to fire the Travel Office employees. For example, the GAO asked Mrs. Clinton whether she asked or directed that any action be taken regarding the Travel Office matter.⁹⁸⁶ Mrs. Clinton denied that she directed that any action be taken.⁹⁸⁷

The only evidence supporting the allegation that Mrs. Clinton may have actually directed the Travel Office firings (other than the evidence relating to the May 14 telephone conversation) is (1) a conversation between David Watkins and Harry Thomason, in which Thomason recounted that Mrs. Clinton was "ready" to fire the employees, and (2) notes of another conversation with Harry Thomason, as retold to Matt Moore in preparing the Watkins Memorandum, that Mrs. Clinton wanted the employees fired. Mrs. Clinton, however, denied telling Thomason that she was ready to fire the Travel Office employees. And Thomason denied ever hearing Mrs. Clinton make any such statement. These denials apply equally to Watkins's recollection recorded in Moore's notes. Thus, the only evidence of that conversation is either Watkins's uncorroborated second-hand hearsay report of what Thomason told him about the first conversation or Moore's uncorroborated notes of another similarly uncorroborated, and, in this case, third-hand hearsay report of another conversation.

⁹⁸⁶ GJ 95-2 Exh. 254.

⁹⁸⁷ Mrs. Clinton's written responses to GAO's written questions 4/6/94, OIC Bates No. AJ-DC-00001520.

Watkins's hearsay reports of what Mrs. Clinton is alleged to have said -- and which Thomason and Mrs. Clinton now deny -- does not support a prosecutable case. Even in the unlikely event this evidence were admissible in a trial of Mrs. Clinton, Watkins did not consider these reports to be orders from Mrs. Clinton to fire the Travel Office employees and has testified on numerous occasions that Mrs. Clinton did not direct him to fire the employees. Watkins has consistently maintained that he was ultimately responsible for and made the decision to discharge the Travel Office employees.⁹⁸⁸ In light of Watkins's testimony and all other evidence, the Independent Counsel concluded that the record is insufficient to establish that Mrs. Clinton actually directed or ordered the Travel Office firings.

2. "Role" or "Input" in the Firings.

Mrs. Clinton gave sworn statements to the GAO, this Office, and Congress regarding the role she played (or more particularly, did not play) in the Travel Office firings. Because substantial evidence exists that portions of those statements were factually false, the Independent Counsel deems it in the public interest to explain why, despite that falsity, no prosecution of Mrs. Clinton is warranted.

a. Testimony of Mrs. Clinton.

GAO -- On April 6, 1994, Neil Eggleston submitted, on behalf of Mrs. Clinton, the following answers⁹⁸⁹ to questions posed by the GAO on behalf of Mrs. Clinton:

2. Mrs. Clinton was aware that Mr. Watkins was undertaking a review of the situation in the Travel Office, but she had no role in the decision to terminate the employees.

⁹⁸⁸ Watkins Int. 11/22/96 at 24.

⁹⁸⁹ The GAO asked if Mrs. Clinton "ask[ed] or direct[ed] that action be taken . . . in regard to the . . . Travel Office." GJ 95-2 Exh. 254. Mrs. Clinton's answer did not address whether she had "asked" anyone to take action -- a far broader concept than "direct."

3. Mrs. Clinton did not direct that any action be taken by anyone with regard to the Travel Office⁹⁹⁰

OIC Deposition -- On July 22, 1995, when asked who made the decision to fire the Travel Office employees, Mrs. Clinton testified:

Q: Who ultimately made the decision, to the extent that you know, to fire the employees from the Travel Office?

A: Well, the best I know is David Watkins and Mack McLarty, I assume, based on what I have learned since and read in the newspapers.

Q: Did you have any role in it?

A: No, I did not.

Q: Did you have any input with either Mr. McLarty or Mr. Watkins as to that decision?

A: I don't believe I did, no.⁹⁹¹

House Committee -- On March 21, 1996, Mrs. Clinton provided written responses, under oath, to questions posed to her by the House Committee on Government Reform and Oversight. Mrs. Clinton responded in relevant part to the congressional questions as follows:

Although I had no decision making role with regard to the removal of the Travel Office employees on May 19, 1993, I expressed my concern, as set forth above, that if there were fiscal mismanagement in the Travel Office or in any part of the White House, it should be addressed promptly. I am sure I felt such action could include, if necessary and justified, appropriate personnel actions so that this Administration would not be blamed for condoning any existing fiscal mismanagement problems, even though the Travel Office employees had been hired by previous administrations. I may have expressed to Mr. Foster and Mr. McLarty, and perhaps to Mr. Watkins, an interest in receiving information about

⁹⁹⁰ Mrs. Clinton's written responses to GAO's written questions 4/6/94, OIC Bates No. AJ-DC-00001520 at 1521.

⁹⁹¹ H. Clinton Depo. 7/22/95 at 9-12.

whether the review that was being conducted found evidence of financial mismanagement.⁹⁹²

b. Analysis.

The Independent Counsel believes there is substantial evidence to establish beyond a reasonable doubt that Mrs. Clinton had a "role" in the decision to fire the Travel Office employees and provided "input" into that decision. Mrs. Clinton's own sworn statement to Congress expressly acknowledges that she "expressed [her] concern . . . that if there were fiscal mismanagement in the Travel Office or in any part of the White House, it should be addressed promptly" and felt that "if necessary and justified, appropriate personnel actions" should be taken.

Those concerns were conveyed to senior White House staff and advisors. The evidence establishes conclusively that Mrs. Clinton had several conversations with Vince Foster, David Watkins, Mack McLarty, and Harry Thomason regarding the Travel Office. As recounted by these individuals, her comments -- considered fairly -- reflect the view that Mrs. Clinton desired that appropriate action be taken concerning the Travel Office employees, including their discharge if warranted. This desire, when communicated through intermediaries to David Watkins, caused him to feel pressure from Mrs. Clinton to act promptly and, ultimately, played a principal role in his decision to fire the employees.

In contrast, there is insufficient evidence to prove that Mrs. Clinton expressly asked or directed McLarty, Foster, or Thomason to communicate her views to Watkins in making his decision. In short, while there is some evidence that Mrs. Clinton knowingly intended to

⁹⁹² GJ 95-2 Exh. 8 at 5, 7-13.

influence Watkins's decision making, in the exercise of prosecutorial discretion, the Independent Counsel has concluded that that proof is insufficient that she in fact did so.

To establish that Mrs. Clinton intended to have such influence, the Office would be obliged to rely on the permissive presumption that an individual intends the natural consequences of her actions. In the Independent Counsel's view -- absent substantial corroborative evidence from witnesses within the White House -- reliance upon that presumption is inadequate to proceed with a prosecution. Although the evidence establishes that Mrs. Clinton's subordinates and advisors invoked her name -- in some cases, to serve their own interests -- and that in doing so they affected Watkins's decision to fire the Travel Office employees, the evidence is insufficient to establish her intent beyond a reasonable doubt.

The evidence that might permit a jury to conclude beyond a reasonable doubt that Mrs. Clinton was aware of her role or input is limited to the testimony of Watkins, McLarty, and Thomason, and Foster's notes, the sum total of which is not sufficient to establish beyond a reasonable doubt Mrs. Clinton's state of mind regarding her characterization of her actions as "role" or "input" in the decision. The only other evidence that might be persuasive -- Mr. Cloud's testimony about Watkins's golf course conversation with Mrs. Clinton -- is uncorroborated, probably inadmissible, and, in any event, appears to be a result of confusion by Mr. Cloud of Watkins's telephone conversation on May 14 with Mrs. Clinton and Watkins's telephone conversation with Patsy Thomasson on May 16.⁹⁹³ In light of these limitations, the Independent Counsel has concluded that insufficient proof exists to convince a jury beyond a

⁹⁹³ Watkins Int. 6/13/00 at 5.

reasonable doubt that Mrs. Clinton knew her testimony was false when given and that she knowingly gave false material testimony under oath to this Office or to Congress.⁹⁹⁴

Factual Falsity -- The evidence is sufficient to establish beyond a reasonable doubt that Mrs. Clinton had a "role" in the Travel Office firings and that she had "input" into that decision.⁹⁹⁵ The testimony of Thomason, McLarty, and Watkins supports this conclusion:

- Harry Thomason testified that he had three separate conversations with the First Lady about the Travel Office before the firings.⁹⁹⁶ He also recalled conveying Mrs. Clinton's concern that "[i]f there is something wrong going on it should be dealt with" to Mr. Watkins.⁹⁹⁷
- McLarty testified that he had two separate conversations with the First Lady about the Travel Office before the findings, one on May 13⁹⁹⁸ and one on May 16.⁹⁹⁹ After the May

⁹⁹⁴ It bears repeating that the same legal impediment to a prosecution for making false statements to the GAO as to Mr. Watkins would pose a similar obstacle to a prosecution of Mrs. Clinton. For this reason, and because Mrs. Clinton's GAO responses are subsumed within her written responses to Congress, we do not analyze the GAO responses independently. See Oakar v. United States, 111 F.3d 146, 153 (D.C. Cir. 1997) (holding that the decision in Hubbard v. United States, 514 U.S. 695 (1995) barred prosecution for false statements to Congress under 18 U.S.C. § 1001).

⁹⁹⁵ It might be argued that the term "role" is restricted in meaning to any formal role Mrs. Clinton might have had and that, inasmuch as Mr. Watkins was not within her "chain of command," she played no formal role, nor could have played a formal role in the decision to terminate the employees. The Office concludes that any such strained interpretation of the language used is contrary to common sense and unlikely to be persuasive to a jury. The term "role" is defined as "a part or function taken or assumed by anyone," Webster's New International Dictionary, 1844 (Reference History ed. 1913), and is sufficiently broad to encompass an advisory role outside of the formal chain of authority. More importantly, however, in sworn deposition testimony, Mrs. Clinton broadened her denial to encompass a denial that she had any "input" in the decision to fire the employees. However crabbed an interpretation one might give to the word "role," it would be unpersuasive that the word "input" did not encompass the advisory role played by Mrs. Clinton.

⁹⁹⁶ Thomason GJ 7/17/96 at 125-31.

⁹⁹⁷ Id. at 133, 142.

⁹⁹⁸ McLarty GJ 7/31/96 at 24.

13 meeting he, too, conveyed Mrs. Clinton's "concerns" to Watkins, and Foster.¹⁰⁰⁰ And, he similarly reported his May 16 phone conversation with Mrs. Clinton to Foster and Watkins.¹⁰⁰¹

- Foster's notes (although probably inadmissible hearsay) reflect that on May 13 he had two separate conversations with the First Lady about the Travel Office.¹⁰⁰² His notes reflect that he discussed Mrs. Clinton's views with McLarty and Watkins that same day.¹⁰⁰³
- And, of course, Watkins testified that he had a telephone conversation with the First Lady on May 14, in which she told Watkins: "[W]e should have our people in there."¹⁰⁰⁴ Watkins reported the substance of his conversation with Mrs. Clinton to Foster and McLarty.¹⁰⁰⁵

Given the eight separate conversations in which Mrs. Clinton discussed the Travel Office with senior White House staff and advisors, the evidence demonstrates that Mrs. Clinton provided "input" to the staff regarding the Travel Office firings and played a "role" in their decision making process. It is, in the Independent Counsel's judgment, beyond peradventure that as a matter of historical fact, Mrs. Clinton's input into the process was a significant -- if not the significant -- factor influencing the pace of events in the Travel Office firings and the ultimate decision to fire the employees. Accordingly, the Independent Counsel concludes that Mrs.

⁹⁹⁹ Id. at 80.

¹⁰⁰⁰ Id. at 58-60; see also Foster Notes (210-DC-00000113); GJ 95-2 Ex. 164 (Watkins Notes).

¹⁰⁰¹ McLarty GJ 7/31/96 at 117-19.

¹⁰⁰² Foster's notes 6/3/93, OIC Bates Nos. 542-DC-00001016-1018, 1060-1067.

¹⁰⁰³ Foster's notes 6/3/93, OIC Bates No. 542-DC-000001017.

¹⁰⁰⁴ Watkins GJ 2/28/95 at 53.

¹⁰⁰⁵ Id. at 57.

Clinton's sworn testimony that she had no input into Watkins's decision or role in the Travel Office firings is factually inaccurate.

Intent -- Despite the foregoing conclusion, the Independent Counsel has determined that there is insufficient evidence to obtain and sustain a conviction of Mrs. Clinton for knowingly making material false statements under oath to this Office and Congress regarding her role in the Travel Office firings. To establish that Mrs. Clinton knowingly gave false testimony under oath to this Office, the United States would need to establish not only that the testimony was false, but that Mrs. Clinton knew the testimony to be false and knowingly gave that false testimony despite her awareness of its falsity. The admissible evidence will not support such a conclusion beyond a reasonable doubt.

Only four individuals -- Watkins, McLarty, Foster,¹⁰⁰⁶ and Thomason -- had direct contact with Mrs. Clinton relating to the Travel Office. Based on their testimony, the investigation has uncovered insufficient evidence that Mrs. Clinton asked or directed McLarty, Foster, or Thomason to communicate her views to Watkins in making the decision or that she directed Watkins to take her views into account. Nor did any of the witnesses provide sufficient evidence that McLarty, Watkins, Thomason, or Foster ever advised Mrs. Clinton of the impact that she had on the decision to fire the Travel Office employees.

¹⁰⁰⁶ Mr. Foster's death prevented the Office from interviewing him. For this reason, given the significance of the precise nature of his interactions with Mrs. Clinton, the Office pursued every available avenue for securing circumstantial evidence of those interactions. Several of Mr. Foster's notes were provided to this Office pursuant to subpoena. However one potentially critical set of notes -- reflecting Mr. Foster's conversations with his attorney, James Hamilton, shortly before his suicide -- were withheld by Mr. Foster's estate and the Office's efforts to compel access to those notes were rejected by the Supreme Court. Swidler & Berlin v. United States, 524 U.S. 399 (1998).

Evidence that Mrs. Clinton, in her only direct communication with Watkins, had a direct and immediate impact on the decision to fire the employees -- the impact of which she could not have been unaware -- is either uncorroborated, inadmissible, or both. According to Watkins, his May 14 telephone conversation with Mrs. Clinton involved her saying that "we need our people in" the Travel Office. No other witness has testified that Mrs. Clinton said this at that time or at any other time. Harry Thomason denied that Mrs. Clinton told him that she was "ready to fire" the employees. He also did not recall his May 12 communication with Watkins that reflected an alleged conversation with Mrs. Clinton (contained only in Matt Moore's notes for the Watkins Memorandum -- which are probably inadmissible) regarding "our people" in connection with the Travel Office.

McLarty resisted characterizing Mrs. Clinton's involvement in the Travel Office as a "role" or "input."¹⁰⁰⁷ He also did not disclose any factual information regarding whether Mrs. Clinton wanted to replace the Travel Office employees with "our people."

Vince Foster's notes are both inconclusive and probably inadmissible. Although the notes reflect Foster's own conversations with Mrs. Clinton -- and are therefore corroborative of her having a "role" or "input"-- the notes twice reflect his concerns that Mrs. Clinton's role in the Travel Office was misperceived. In any event, the notes are probably inadmissible hearsay because they cannot be proven to be present sense impressions, a business record kept in the regular course of practice, or subject to the "residual exception" to the hearsay rule.¹⁰⁰⁸

¹⁰⁰⁷ McLarty responded to questioning about Mrs. Clinton's input by saying that input "is your word." McLarty GJ 7/31/96 at 88. He also denied that Mrs. Clinton had a role because the term "'role' implies an active participatory role in the discussion and decision of whether to use Peat Marwick." Id. at 91.

¹⁰⁰⁸ See Fed. R. Evid. 803(1), 803(6), and 804(5).

The only other evidence regarding Mrs. Clinton's direct communication with Watkins was Mr. Cloud's testimony regarding Watkins's golf course telephone call with Mrs. Clinton, after which Watkins allegedly said that he would have to fire the Travel Office employees. If Watkins's statement to Cloud itself were corroborated by other admissible evidence, that might constitute additional evidence that whatever Mrs. Clinton said in that conversation, it was sufficiently direct and forceful to cause Watkins to announce that he would have to fire the employees. However, the call itself, alleged to have occurred on May 16, is uncorroborated by telephone records.

Moreover, Watkins has stated that he believed that Mr. Cloud may have confused his conversation with Mrs. Clinton with his conversation with Patsy Thomasson. In his conversation with Patsy Thomasson, he has said, she reported on the Peat Marwick audit which may have provoked Watkins to utter the kind of profanities Mr. Cloud recalled concerning the firing of the Travel Office employees.¹⁰⁰⁹

Perhaps most importantly, Mr. Cloud had no way of knowing for certain to whom Watkins was speaking. To the extent that Mr. Cloud's testimony purported to report Watkins's statement about what Mrs. Clinton said, such testimony would be inadmissible hearsay at any trial of Mrs. Clinton. For Watkins's statement to be attributable to Mrs. Clinton, and therefore also admissible against her as a statement of a party opponent, the government must prove that Mrs. Clinton had authorized Watkins to make the statement;¹⁰¹⁰ that Watkins, in making the statement, was acting as Mrs. Clinton's agent and was acting in the scope of that agency;¹⁰¹¹ or

¹⁰⁰⁹ Watkins Int. 6/13/00 at 5.

¹⁰¹⁰ Fed. R. Evid. 802(d)(2)(C).

¹⁰¹¹ Fed. R. Evid. 802(d)(2)(D).

that Watkins and Mrs. Clinton were members of a conspiracy, and the statement was in furtherance of that conspiracy.¹⁰¹² The government cannot prove any of these scenarios as to Mrs. Clinton.

Finally, Watkins's testimony about Mrs. Clinton's May 14 telephone conversation with him would be subject to impeachment for a number of reasons including: 1) his prior statements that Mrs. Clinton did not direct the firings and that the decision to fire them was his own; 2) his dismissal from the White House for using a presidential helicopter while examining a golf course as evidence of bias; and 3) his motive to retaliate for being reprimanded for his handling of the firing.

Mrs. Clinton, no doubt was aware that her interest, as expressed, had some effect on what resulted in the Travel Office firings. Certainly, the effect Mrs. Clinton's intervention had on others is circumstantial evidence from which a jury could infer that Mrs. Clinton intended to have such an effect. The direct testimony regarding her conversations with others could reasonably be construed as intending to affect Watkins's decision inasmuch as a jury could conclude that those conversations had a purpose. In other words, a jury could infer from the circumstantial evidence that Mrs. Clinton intended to have an effect on the firing decision because her actions in speaking to McLarty, Foster, Watkins, and Thomason are inconsistent with any other inference.

The jury could also infer from the evidence that Mrs. Clinton was aware of the effect she had on the White House staff. As a matter of law, the jury may presume (though it is not required to do so) that an individual intends the natural and probable consequences of her

¹⁰¹² Fed. R. Evid. 802(d)(2)(E); see Bourjaily v. United States, 483 U.S. 171 (1987).

actions.¹⁰¹³ Thus, a jury could conclude, based upon the available evidence, that Mrs. Clinton must have known that, in light of her status as First Lady and one of the President's principal advisors, her inquiries and statements to McLarty, Foster and Watkins about the Travel Office matter would invariably influence the ultimate decision made by White House staff members. And yet, Watkins himself questioned in the later drafts of the Watkins Memorandum whether Mrs. Clinton was even aware of the effect that she was having.

In sum, whatever a jury could or might do with this evidence, the limitations of the testimonial evidence that might firmly establish Mrs. Clinton's state of mind are, in the Independent Counsel's judgment, a substantial -- and in this case, determinative -- barrier to obtaining and sustaining a conviction. The ultimate burden on a responsible prosecutor is to present a case that will establish beyond a reasonable doubt all of the elements of an offense.

But the sufficiency of evidence is not simply a technical question. While evidence sufficient to sustain a conviction is a minimum prerequisite,¹⁰¹⁴ it is not, however, the sole factor to be considered. A prosecutor must also believe that "the person [charged] probably will be found guilty by an unbiased trier of fact."¹⁰¹⁵

Here, in the Independent Counsel's judgment, there are insufficient grounds on which to proceed with a prosecution. Although the evidence establishes that Mrs. Clinton's subordinates invoked her name and thereby affected Watkins's decision to fire the Travel Office employees, in the Independent Counsel's view, the remaining evidence of Mrs. Clinton's intent to have such

¹⁰¹³ 1 Devitt, Blackmar and O'Malley, Federal Jury Practice and Instructions §17.07 (4th ed. 1990); see United States v. United States Gypsum Co., 438 U.S. 422 (1978).

¹⁰¹⁴ See Federal Rule of Criminal Procedure 29(a).

¹⁰¹⁵ United States Attorneys' Manual, Principals of Federal Prosecution § 9-27.220(B).

an effect (or awareness of having such an effect) is inadequate to secure a reasonable likelihood of conviction.

C. The Evidence is Insufficient to Prove Beyond a Reasonable Doubt that David Watkins or Others Obstructed Justice by Withholding the Watkins Memorandum.

The Independent Counsel also considered whether the evidence regarding the failure to produce the Watkins Memorandum until January 1996 to Congress and this Office warranted prosecution of Watkins for obstruction of either the Congressional investigation or this Office's investigation under 18 U.S.C. § 1503. After granting Matt Moore immunity to obtain relevant testimony regarding Watkins's role in withholding the memorandum, the Independent Counsel concluded that the evidence was insufficient to prove beyond a reasonable doubt that Watkins knowingly withheld the memorandum.

The evidence regarding Watkins's failure to produce the Watkins Memorandum to this investigation at the time Watkins appeared before the grand jury in February 1995 is insufficient to prove beyond a reasonable doubt that he knowingly obstructed this investigation. He was not asked in the grand jury his specific understanding of the subpoena and its requirement to produce Travel Office documents that would have included his memorandum. Accordingly, the evidence is insufficient to prove that Watkins knew that those documents were required to be produced.

* * * * *

Accordingly, in the exercise of his prosecutorial discretion, the Independent Counsel has determined not to present an indictment to the grand jury concerning the testimony or statements of William David Watkins, Hillary Rodham Clinton or others, or for any acts of alleged obstruction of justice arising out of this investigation.

VII. SUMMARY CONCLUSION

The decision to fire the Travel Office employees was a lawful one. The Travel Office employees served at the pleasure of President Bill Clinton, and they were subject to discharge without cause.

Even were cause a prerequisite for the employees' discharge, there was, at the time the firings occurred, evidence of financial mismanagement in the Travel Office. The audit of Travel Office operations by Peat Marwick KPMG had uncovered evidence relating to the handling of the petty cash account. The auditors had reported their findings to David Watkins. And, based principally upon the Peat Marwick report, the Federal Bureau of Investigation had determined that sufficient evidence existed to provide the requisite predicate for the opening of a criminal investigation. In addition, Harry Thomason and Catherine Cornelius were pressing for the removal of the career White House Travel Office staff.

Notwithstanding the lawfulness of Watkins's action, the manner in which the Travel Office employees came to be discharged raised suspicions of political motivation. The Travel Office staff had served Democratic and Republican administrations, some since the early 1960s. Nonetheless, Catherine Cornelius, Clarissa Cerda, and Darnell Martens, each for personal reasons, urged the staff's removal, with the hope and expectation that they would obtain positions of responsibility in the reorganized Travel Office. In that regard, Martens and Cornelius gave credence to, and widely disseminated within the White House, numerous, varied allegations of misconduct by the Travel Office employees -- allegations that were, to a large degree, utterly without factual foundation.

When Harry Thomason, a close friend of President and Mrs. Clinton, became aware of these allegations of misconduct, he brought them to the attention of Mrs. Clinton -- having at least three separate conversations with her about the Travel Office. Thomason's intervention generated Mrs. Clinton's concerns about the Travel Office. And, having served as the catalyst for her concerns, Thomason then forcefully conveyed Mrs. Clinton's interest in the matter to senior White House staff.

The senior White House staff -- principally McLarty, Watkins, and Foster -- and Thomason met and discussed Mrs. Clinton's views on at least three separate occasions. And McLarty, Foster, and Watkins each also had separate conversations (five more, in total) with Mrs. Clinton regarding the Travel Office. Taken individually, and viewed in isolation, Mrs. Clinton's comments on the Travel Office might have had little influence.

However, given Mrs. Clinton's position as a "principal"¹⁰¹⁶ within the Administration and Thomason's repeated intervention and invocation of Mrs. Clinton's name, these discussions (taken collectively) were of great significance to the senior White House staff. They came to feel a significant pressure to act -- a pressure that principally led to the decision to fire the Travel Office employees. Given the manner in which the Administration's concerns regarding the Travel Office were initially generated, it was fortuitous that subsequent inquiry by responsible investigative bodies disclosed improper fiscal conduct that was used to justify the firing decision.

The Administration's personnel management practices (as well as allegations that White House officials improperly invoked their authority to misuse the Federal Bureau of Investigation and Internal Revenue Service) were an appropriate subject of public inquiry. The General

¹⁰¹⁶ See McLarty GJ 7/31/96 at 140 (reflecting the testimony of Mack McLarty that he viewed Mrs. Clinton as a "principal").

Accounting Office and the House of Representatives were acting well within the scope of their authority in undertaking inquiries into the Administration's handling of the Travel Office firings. And, too, this Office's investigation of the death of Mr. Foster necessarily entailed an examination of the events leading up to the firing of the Travel Office employees.

The jurisdictional grant to this Office was directly derived from those inquiries into the Administration's management practices. The Office was charged with determining whether any federal offenses had been committed by William David Watkins or Hillary Rodham Clinton in responding to the inquires of Congress, the GAO, and this Office. In short, the question was whether there was a "cover-up" in violation of federal criminal law of the White House's alleged mismanagement of the firings.

The answer is simple: The evidence is insufficient to prove a cover-up involving any violations of federal criminal law. That is, the evidence is insufficient to prove to a jury beyond a reasonable doubt that either Mr. Watkins or Mrs. Clinton committed perjury or obstruction of justice during the course of their testimony before GAO, the Congress, and this investigation.

Mr. Watkins testified repeatedly and consistently to the pressure that he felt from the First Lady to fire the Travel Office employees -- a pressure exerted primarily through intermediaries. And he testified repeatedly and consistently that the ultimate decision to fire the employees was his alone -- testimony that stands virtually uncontradicted at the conclusion of this investigation. To the extent Mr. Watkins may have attempted to minimize Mrs. Clinton's role, his testimony was sufficiently transparent not to obscure the basic truth regarding the nature of his interaction with the First Lady.

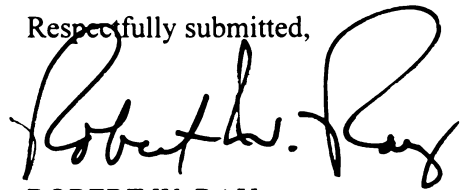
With respect to Mrs. Clinton, the overwhelming evidence establishes that she played a role in the decision to fire the employees and provided input into that decision to Watkins,

McLarty, Foster, and Thomason. Thus, her statement to the contrary under oath to this Office was factually false.

The evidence, however, is insufficient to show that Mrs. Clinton knowingly intended to influence the Travel Office decision or was aware that she had such influence at this early stage of the Administration. To a real degree, her interest in the matter was first generated by Thomason's intervention, and then overstated by him to others. Thus, absent persuasive, corroborated, and admissible evidence to the contrary, there is insufficient evidence to prove beyond a reasonable doubt that Mrs. Clinton's statements to this Office or to Congress were knowingly false.

Accordingly, the Independent Counsel has declined prosecution, and the Travel Office investigation is now closed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert W. Ray". The signature is fluid and cursive, with a large, stylized "R" at the beginning and a long, sweeping tail that extends to the right.

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June 22, 2000

APPENDIX A

The investigations by this Office, the Department of Justice, the GAO, and the House Committee on Government Reform and Oversight all suffered from serious resistance by the White House to provide relevant evidence to which these investigative bodies were lawfully entitled. This resistance took numerous forms which are described in this Appendix.

I. Witnesses Were Uncooperative in this Office's Investigation.

White House Deputy Press Secretary Jeff Eller, who was closely involved in the events leading up to the firings, claimed to remember very little of his involvement. Typical of Eller's testimony before the grand jury was the following:

Q: [D]id Catherine Cornelius tell you anything between January 20th, 1993 and May 19th, 1993 about any issues or problems in the White House Travel Office?

A: I don't recall specifically or generally if she did or didn't.

Q: Do you recall whether or not you heard about any concerns or problems in the White House from any other source other than Catherine Cornelius, prior to May 19th of 1993?

A: Well, I don't recall specifically or generally whether I did or didn't.

Q: Do you recall specifically or generally prior to May 19th, 1993 whether or not Catherine Cornelius told you that there was a possibility there were going to be significant changes made in the White House Travel Office?

A: I don't recall specifically or generally if she did or didn't.¹

In contrast, Cornelius testified to numerous conversations she and Eller had had about the Travel Office, saying she did not have "any doubt" that she had discussed her desire to work in the

¹ Eller GJ 7/17/96 at 15.

Travel Office with Eller since working on the campaign together.² Eller claimed he could not recall such discussions with her.³

Numerous witnesses also recalled that, on May 14, Eller went to Chief of Staff Thomas "Mack" McLarty's office without an appointment and insisted on a meeting, where Eller then argued that the Travel Office employees should be fired immediately.⁴ Eller, though, testified, "I tried to recall why I would have ended up in the Chief of Staff's office and I don't -- I don't recall why I ended up there."⁵ Despite evidence of this involvement, Eller testified, "I don't recall," "I don't remember" or some other variant of claimed failed memory in excess of 200 times during less than two hours of grand jury testimony.⁶

When Harold Ickes, later White House Deputy Chief of Staff, was still a private sector attorney, he logged a two hour meeting with Harry Thomason on May 11, 1993 on his law firm

² Cornelius GJ 7/25/96 at 168-70.

³ Eller GJ 7/17/96 at 9-12. In e-mails recently produced to this Office on June 19, 2000, Cornelius wrote to Jeff Eller: "I have to begin writing my evaluation memo on the Travel Office tonight. . . . I am glad that it will be over by next weekend. . . . Gosh, Jeff[,] by next week I may really be the Director of this office, officially." E-mail from Cornelius to Eller, May 6, 1993, OIC Bates No. WHTO-DC-0010029. Another May 1993 e-mail reflected that Cornelius wrote to Eller that she "w[ould] look to you [Eller] as our press advisor." E-mail from Cornelius to Eller, May 4, 1993, OIC Bates No. WHTO-DC-0010583. The failure to produce these e-mails until June 2000 -- four years after they were called for by subpoena -- prevented this Office from using them to refresh Eller's recollection at the time of his earlier testimony.

⁴ McLarty House Depo. 7/12/96 at 34-35; McLarty GJ 7/31/96 at 65; Seidman GJ 7/18/96 at 20-24; GJ 95-2 Exh. 241 (Deputy White House Counsel Vincent Foster's notes of meeting).

⁵ Eller GJ 7/17/96 at 54.

⁶ Id. at 1-112 (complete transcript).

time sheet.⁷ Ickes claimed he had "no idea" where the meeting was held, that he did not "recall who was there, if anyone," what city it was held in, or what was discussed.⁸ Ickes also received approximately a half dozen phone calls from Harry Thomason from May-July 1993, as corroborated by message slips produced by Ickes.⁹ After examining the phone slips, Ickes said, "I don't know why he was calling. I don't even -- and as I've testified before, I don't even know whether I returned the calls."¹⁰ When Ickes was asked if he had ever subsequently followed up with Thomason on the phone calls, Ickes testified, "[t]hese don't indicate whether or not I talked to him at other times. All these records indicate are that he placed a call; that I did not take the call; and that -- that's all they record."¹¹

Deputy Chief of Staff Mark Gearan was shown a June 1, 1993 memorandum from himself, Deputy Staff Secretary Todd Stern, and Staff Secretary John Podesta to Chief of Staff Mack McLarty in which Gearan had handwritten the notation "Lloyd Cutler -- outside counsel."¹² Gearan said he did not know what the significance of this notation was.¹³ Also on

⁷ Ickes GJ 7/16/96 at 29-31; Ickes's handwritten time sheet for the date 5/11/93, OIC Bates No. 519-DC-00000011.

⁸ Ickes GJ 7/16/96 at 29-32.

⁹ Ickes's telephone message slips May - July 1993, OIC Bates No. 519-DC-00000007-010.

¹⁰ Ickes GJ 7/16/96 at 33.

¹¹ Id. at 34.

¹² Gearan GJ 7/11/96 at 36; Memorandum from Podesta, Stern, and Gearan to McLarty establishing a work plan for the White House Management Review 6/1/93, OIC Bates No. 542-DC-00030208 at 30209.

¹³ Gearan GJ 7/11/96 at 36.

the page was the reference: "We talked to Harry Thomason last Thursday," but Gearan said, "I don't believe so" when asked if he had talked to Harry Thomason in the last week of May 1993.¹⁴ The same memorandum stated: "Mark should participate in a few designated interviews and sit in on others as he sees fit," and that Gearan would sit in on the interviews of Catherine Cornelius, Jeff Eller, David Watkins, and Bruce Lindsey.¹⁵ When confronted with this memorandum, Gearan claimed he had no recollection of sitting in on those or any other interviews conducted as part of the Management Review.¹⁶

David Watkins's deputy at the time of the firings, Patsy Thomasson, testified "[t]hat is correct" when asked to confirm that "there is no question in your mind" that she had a conversation with either Clarissa Cerda or Catherine Cornelius about a February 15, 1993 memorandum they had submitted to David Watkins requesting that they be made co-directors of the Travel Office.¹⁷ Three months earlier she had testified in front of Congress that she could not recall having any discussions with either Cerda or Cornelius about the memorandum.¹⁸

¹⁴ Gearan GJ 7/11/96 at 37; Memorandum from Podesta, Stern, and Gearan to McLarty establishing a work plan for the White House Management Review 6/1/93, OIC Bates No. 542-DC-0030208 at 30209.

¹⁵ Gearan GJ 7/11/96 at 39-42; Memorandum from Podesta, Stern, and Gearan to McLarty establishing a work plan for the White House Management Review 6/1/93, OIC Bates No. 542-DC-00030208 at 30210. This memorandum appears to have been written as a result of a May 25, 1993 meeting attended by McLarty and Gearan. McLarty GJ 7/31/96 at 141-42 (stating that the purpose of the meeting was to start the management review process).

¹⁶ Gearan GJ 7/11/96 at 39-42.

¹⁷ Thomasson GJ 7/24/96 at 225-27; Briefing Book and Proposal by Cornelius and Cerda 2/15/93, OIC Bates No. 542-DC-00007432 at 7440 (proposing a structural reorganization of the Travel Office).

¹⁸ Thomasson GJ 7/24/96 at 227 (reviewing Thomasson House Depo. 4/22/96 at 136).

Confronted with the inconsistency, Thomasson testified that she had refreshed her memory by reviewing reports of FBI interviews she had received from her attorney after her congressional testimony.¹⁹

Ms. Thomasson was then shown those interview reports and asked if she could point out "where in either one of those [reports] it says that you had a discussion with Catherine [Cornelius] or Clarissa [Cerde] about the February 15th memorandum, and that Mr. Watkins told you that he did not read the February 15th memorandum?"²⁰ Ms. Thomasson acknowledged that there was nothing in those interview reports that could have refreshed her memory, as claimed, and said, "[i]s that what the question was that I said was on the [reports]? . . . I thought we were talking about Matt Moore."²¹ Ms. Thomasson also acknowledged, however, that "Matt Moore's question would not be in here [the reports]" either.²² Thomasson then stated that her refreshed recollection resulted from reviewing "my notes, or a deposition."²³

Although Thomasson was asked to produce whatever document had refreshed her recollection, no such document or transcript was ever produced by her.²⁴ This Office also executed a search warrant of her home that evening, and no document that could have refreshed her memory as claimed was found.

¹⁹ Id. at 229.

²⁰ Id. at 231.

²¹ Id.

²² Id. at 232.

²³ Id.

²⁴ Id. at 239-40.

Chief of Staff Mack McLarty had varying recollections of his May 16 conversation with Mrs. Clinton in which she described the Travel Office as a "serious matter" about which a decision needed to be made quickly.²⁵ Mrs. Clinton's statement that it was a "serious matter" was omitted from the July 2, 1993 White House Travel Office Management Review because, McLarty claimed, he had not recalled her statement when Podesta interviewed him for the Management Review.²⁶ McLarty said questions during the press briefing when the Management Review was released then made him remember that fact.²⁷ During the press briefing, a reporter asked McLarty, "[w]hat was the First Lady's role in this?" to which McLarty answered, "Hillary, in a meeting with me -- it was a stand-up meeting of about five minutes -- asked about this. She was aware of it And just simply suggested from what she had understood we could certainly improve efficiency here, it appeared to be mismanagement, had heard some of the rumors that have been alluded to earlier. That was about the extent of the conversation with me. As I recall it, we also covered a couple of other matters in that conversation. And I think she also asked me about it one other time as to the status after the Peat Marwick review."²⁸

But after remembering the meeting at the July 1993 press briefing, McLarty "did not remember the May 16th meeting" again during his March 23, 1994 interview with the GAO.²⁹ McLarty said that he was able to remember it when he testified before this investigation's grand

²⁵ McLarty GJ 7/31/96 at 80-82.

²⁶ Id. at 97-98.

²⁷ Id. at 98.

²⁸ Statement of White House Chief of Staff Thomas M. McLarty, White House Press Briefing (July 2, 1993).

²⁹ McLarty GJ 7/31/96 at 103.

jury because "I think my attorneys have talked to the First Lady's attorneys, and, therefore, I think that's been conveyed to me, what she has said, either in a public interview, which, of course, I could see or read, or in her interrogatories."³⁰

Lisa Caputo claimed that her personal lawyer had informed her that the White House Counsel had asserted a privilege concerning her testimony.³¹ Ultimately, the White House informed her that she was permitted to testify about information discussed during certain meetings, but only if the information had already been made public.³²

Nelson Cunningham testified that the White House Counsel's Office had instructed his private attorney to instruct Cunningham to refuse to answer questions about what Associate White House Counsel Natalie Williams said about the discovery of the Watkins Memorandum in Cunningham's presence in December 1995.³³ At the same time, Natalie Williams was instructed by the White House to refuse to answer questions about her conversations with White House Special Counsel Jane Sherburne regarding the discovery of the Watkins Memorandum by invoking attorney-client and executive privileges.³⁴ Bruce Overton was instructed by the White House Counsel's Office not to testify regarding a phone conversation with that Office about the discovery of the Watkins Memorandum because "[i]t's a privileged matter."³⁵

³⁰ Id. at 111.

³¹ Caputo GJ 7/31/96 at 41-42.

³² Caputo GJ 8/1/96 at 20-21.

³³ Cunningham GJ 6/11/96 at 16-19.

³⁴ N. Williams GJ 6/11/96 at 31.

³⁵ Overton GJ 6/11/96 at 28-29. Ultimately the courts rejected the persistent invocation of attorney-client privilege to prohibit White House Counsel from having to present evidence to

Documents plainly required to be produced were withheld. For example, on March 25, 1996, the grand jury issued a subpoena to the "Executive Office of the President" demanding production by April 12, 1996 of, among other things, "[a]ny and all documents and/or communications created or made from November 1, 1992 to July 2, 1993, inclusive, referring to or relating in any way to the management, operation, or staffing of the White House Travel Office," and "[a]ny and all documents and/or communications referring to or relating in any way to the May 19, 1993 dismissal of employees of the White House Travel Office."³⁶ On April 2, 1996, the grand jury issued a subpoena to "The White House" demanding production by April 30, 1996 of, among other things, "documents and/or communications of . . . Todd Stern," limited to "[a]ny and all documents and/or communications (including notes and diaries) created or

a grand jury, but only after years of unnecessary litigation that prevented this Office from obtaining evidence that the grand jury needed. The United States Court of Appeals for the District of Columbia Circuit held:

[w]hen an executive branch attorney is called before a federal grand jury to give evidence about alleged crimes within the executive branch, reason and experience, duty, and tradition dictate that the attorney shall provide that evidence. With respect to investigations of federal criminal offenses, and especially offenses committed by those in government, government attorneys stand in a far different position from members of the private bar. Their duty is not to defend clients against criminal charges and it is not to protect wrongdoers from public exposure. . . . Unlike a private practitioner, the loyalties of a government lawyer therefore cannot and must not lie solely with his or her client. . . . In sum, it would be contrary to tradition, common understanding, and our governmental system for the attorney-client privilege to attach to White House Counsel in the same manner as private counsel. When government attorneys learn, through communications with their clients, of information related to criminal misconduct, they may not rely on the government attorney-client privilege to shield such information from disclosure to a grand jury.

In re: Lindsey, 158 F.3d 1263, 1272-73, 1278 (D.C. Cir. 1998).

³⁶ Grand Jury Subpoena No. D472 (D.D.C. Mar. 25, 1996).

made on or after November 1, 1992 that refer or relate to Vincent W. Foster, Jr. and the White House Travel Office."³⁷

On June 3, 1993, Todd Stern interviewed Vincent Foster about the Travel Office firings as part of the White House Travel Office Management Review, and Stern took notes.³⁸ The above-mentioned subpoenas required the White House to provide these notes, but no such notes were produced. During Stern's testimony before the grand jury on July 10, 1996, this Office learned that Stern's notes existed and that the White House Counsel's Office had provided Stern's private attorney with a copy of Stern's notes for Stern to review at his attorney's office the day before he testified.³⁹ Stern's private attorney then provided the grand jury with his copy of Stern's notes.⁴⁰

White House lawyers coordinated strategy with private counsel by discussing their testimony and statements. In an interview with this Office on May 24, 2000, Watkins's former attorney, Ty Cobb, admitted having several conferences with Associate White House Counsels Neil Eggleston and Clifford Sloan in which he detailed to them what Watkins had told the FBI.⁴¹

³⁷ Grand Jury Subpoena No. D542 (D.D.C. Apr. 2, 1996)(emphasis in original).

³⁸ Stern GJ 7/10/96 at 102, 120.

³⁹ Id. at 120-21.

⁴⁰ Id. at 214 (GJ 95-2 Exhs. 160, 161 & 162).

⁴¹ Cobb Int. 5/24/00 at 2-3.

Undated notes prepared by an unknown author provided to this Office in August 1996 by the White House reflected a phone conversation between Harry Thomason's counsel, Amy Sabrin, and the White House:

Amy Sabrin

New

Harry → conversations w/ her in passing → 1 or 2 in passing → he recalls being in office abt Little Rock/Inauguration. Travel Office comes up → status report. Told her abt things he viewed were wrong. [T]hey should be replaced disloyalty. -- Remembers telling DW should be replaced, & that FL shares his view.⁴²

Finally, the White House, even as of the date of filing of this report, has failed to produce all documents to which this Office is entitled. Between December 1995 and August 1996, the grand jury issued thirty-three (33) subpoenas to the White House and its affiliates which required the search of records, significantly including all e-mails with respect to the death of Vincent Foster and the Travel Office firings. At the time the subpoenas were served on the White House, its e-mail records for the time period January 1993 through July 1994 were substantially contained on back-up tapes in the custody of the White House. Yet these records were never searched in response to any subpoena. At least by mid-1999, all White House e-mail records for this time period had been fully transferred from the back-up tapes and loaded into a searchable computer database system known as the Automated Records Management System (ARMS). Still, the e-mail records were never searched, despite the subpoenas' command. After it became clear that these records had not been searched as required by previous subpoenas, on March 22, 2000, the OIC insisted upon an immediate search of all e-mails prior to July 1994 and the

⁴² Notes of Sabrin conversation undated, OIC Bates No. 542-DC-00037067.

production of all responsive records contained therein. This insistence was met with yet further delay.

In early spring of 2000, it was publicly revealed that another large body of records within the custody of the White House was also not searched in response to lawfully issued subpoenas compelling such a search.⁴³ On April 18, 2000, the Washington Post reported Deputy White House Press Secretary Jim Kennedy's statement confirming that back-up tapes of the hard drive records of former White House employees had never been searched.⁴⁴

In light of these public revelations, the OIC wrote to Beth Nolan, Counsel to the President, seeking an answer as to whether the hard-drive records of former employees had ever been searched in response to subpoenas.⁴⁵ On May 5, 2000, the White House acknowledged that other than in three instances, these records had never been searched.⁴⁶ The hard-drive records

⁴³ The Washington Times reported, "Officials at Northrop Grumman Corp. have confirmed that thousands of White House e-mails containing information on 'Filegate,' campaign finance abuses, 'Chinagate' and Monica Lewinsky were never turned over to a federal grand jury or three congressional committees despite pending subpoenas." Jerry Seper, White House e-mails Are Verified [--] Northrop Officials Say Subpoenaed Messages Kept Secret, The Wash. Times, Mar. 9, 2000 at A1.

⁴⁴ On April 18, 2000, the Washington Post reported Deputy White House Press Secretary Jim Kennedy's statement confirming that back-up tapes of the hard drive records of former White House employees had never been searched. George Lardner, Jr., White House Data Unsearched; Hard Drive, Tapes Not Examined for Subpoenaed Records, The Wash. Post, Apr. 18, 2000 at A27. Kennedy was quoted as stating, "a subpoena can ask for the moon, that doesn't mean we have to produce it." Id. Other "officials" were quoted as stating that they "have no intention of examining the electronic records -- memos, speeches, drafts, schedules, notes and other items written on the computers of former staffers -- because of the prohibitive costs involved." Id.

⁴⁵ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, Counsel to the President (April 20, 2000).

⁴⁶ Letter from Beth Nolan, Counsel the President, to Robert W. Ray, Independent Counsel (May 5, 2000).

that had not been searched included the hard-drive records of Vincent Foster. Our efforts (as late as the weeks before the filing of this Final Report) to obtain production of records from Foster's hard-drive have been met with results that are far from full compliance with subpoenas issued over five years ago.

In May 2000, the OIC learned that the White House had asserted during discovery proceedings in Alexander v. Federal Bureau of Investigation, Civil Action Nos. 96-2123/97-1288 (RCL) (D.D.C.), that a search of "indices" of White House records maintained by the Office of Records Management (ORM) relieved them of the obligation to conduct a full search of all records within the custody of ORM. In light of that argument, the OIC wrote to the Counsel to the President seeking assurances that all appropriate records within ORM were fully searched in response to every subpoena issued by this Office.⁴⁷ As of the date of this report, the White House has declined to provide any such assurance.

Nevertheless, this Office has obtained, as of the date of this Report, certain records that were previously not provided and concluded the investigation of the Travel Office matter may now be closed. Notwithstanding the closure of the Travel Office matter, this Office retains jurisdiction with respect to these same matters as they relate to the remaining jurisdictional mandates of this Office.

II. The Department of Justice Did Not Receive Timely Production of Documents in Its Investigation.

The Department of Justice Office of Professional Responsibility ("OPR") conducted an investigation of the involvement of the FBI in advising and assisting the White House in

⁴⁷ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, Counsel to the President (May 24, 2000).

reviewing the management of the Travel Office's finances. OPR Counsel Michael Shaheen prepared a memorandum to Associate Deputy Attorney General David Margolis concerning the White House's lack of cooperation with his investigation.⁴⁸ In his memorandum, Mr. Shaheen wrote:

We were stunned to learn of the existence of [Vince Foster's Travel Office Notebook] since it so obviously bears directly upon the inquiry we were directed to undertake in late July and August 1993 by the DAG Philip Heymann . . . the White House was less than fully cooperative and forthcoming. The fact that we have just now learned of the existence of obviously relevant notes written by Mr. Foster on the subject of the FBI Report is yet another example of the lack of cooperation and candor we received from the White House throughout the inquiry.⁴⁹

In his testimony before the House Committee, Mr. Shaheen described the lack of cooperation and candor as "unprecedented."⁵⁰

The Department of Justice Office Public Integrity Section also experienced belated production of documents. On June 24, 1994, Associate Counsel to the President Neil Eggleston represented to Public Integrity Section Senior Litigation Counsel Stuart Goldberg that all "responsive documents found in [the White House's] search have been provided to the agents of

⁴⁸ See H.R. Rep. No. 849, 104th Cong., 2d Sess. 128 (1996)(citing Memorandum to David Margolis, Associate Deputy Attorney General, from Michael Shaheen Jr., Counsel, OPR, subject: Undisclosed Foster Notebook re the White House Travel Office Matter, July 24, 1995).

⁴⁹ Id. (emphasis supplied).

⁵⁰ Id.

the Federal Bureau of Investigation working with you on this criminal investigation."⁵¹ On August 12, 1994, Mr. Eggleston forwarded additional responsive documents to Mr. Goldberg.⁵²

Mr. Goldberg replied: "We were quite surprised to receive these materials."⁵³ He observed that Mr. Eggleston had "represented that [the White House] had completed [its] search and that all documents responsive to the Department's request had been produced."⁵⁴ Mr. Goldberg specifically requested that Mr. Eggleston provide an "explanation as to how these additional documents were missed in the document search . . . described in your letter dated June 24, 1994."⁵⁵

This incident was apparently not an isolated one. The White House's failure to produce documents prompted Public Integrity Section Chief Lee Radek to conclude on September 8, 1994 that "[W]e are not confident that the White House has produced to us all the documents in its possession relating to the Thomason allegations."⁵⁶

III. The White House Did Not Cooperate With the General Accounting Office.

On July 2, 1993, Congress passed the Supplemental Appropriations Act of 1993, requiring that the GAO "conduct a review of the action taken with respect to the White House

⁵¹ Letter from W. Neil Eggleston, Associate Counsel to the President, to Stuart M. Goldberg, Esq., Senior Litigation Counsel, Public Integrity Section (June 24, 1994).

⁵² Letter from W. Neil Eggleston, Associate Counsel to the President, to Stuart M. Goldberg, Esq., Senior Litigation Counsel, Public Integrity Section (August 12, 1994).

⁵³ Letter from Stuart M. Goldberg, Esq., Senior Litigation Counsel, Public Integrity Section, to W. Neil Eggleston, Associate Counsel to the President (August 30, 1994).

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ H.R. Rep. No. 849, 104th Cong., 2d Sess. 151 (1996).

Travel Office”⁵⁷ The GAO subsequently reviewed several issues relating to the Travel Office, including the actions taken in the spring of 1993, that led to the firings of the Travel Office employees.⁵⁸

The GAO interviewed many of the principal players in the Travel Office matter, including Watkins, McLarty and Cornelius, but was unable to interview the terminated employees because of the pending DOJ criminal investigation.⁵⁹ The White House did not welcome the GAO inquiry. A report by GAO Investigator Robert Homan of a meeting with White House officials on August 11, 1993 reflects that Roy Neel, then-Deputy Chief of Staff, informed the GAO investigators that “he considered our work on the Travel Office to be a ‘nuisance’ and that he wanted it done as soon as possible.”⁶⁰

The GAO made numerous requests for documents to the White House.⁶¹ The White House demanded in return that an attorney from the White House Counsel's Office be present at

⁵⁷ GAO Report to the Congress on White House Travel Office Operations May 1994, OIC Bates No. 542-DC-00023261 at 23263; Supplemental Appropriations Act of 1993, Pub. L. 103-50, 107 Stat. 241.

⁵⁸ GAO Report to the Congress on White House Travel Office Operations May 1994, OIC Bates No. 542-DC-00023261 at 23263.

⁵⁹ Kingsbury GJ 6/27/96 at 10, 26, 31, 34.

⁶⁰ Homan's Record of Interview with Neel 8/11/93, OIC Bates No. AJ-DC-00000013 at 017.

⁶¹ See Nussbaum GJ 7/16/96 at 60; see also Eggleston GJ 7/18/96 at 6. The GAO's contact at the White House for the Travel Office investigation was Associate White House Counsel Neil Eggleston. Kingsbury GJ 6/27/96 at 13. The GAO did not have subpoena power. Id. at 11.

every GAO interview of White House employees.⁶² To the extent the White House was not able to be present, it sought to monitor the GAO investigation through cooperating private counsel.

The White House did not provide the GAO with notes of the interviews conducted by Podesta and Stern during the Management Review.⁶³ Nor did the White House provide the GAO with Watkins's May 31 handwritten notes⁶⁴ or the various drafts of the Watkins Memorandum prepared during the Fall of 1993.⁶⁵ Eggleston testified that at a December 1993 meeting, it was

⁶² Kingsbury GJ 6/27/96 at 17-18. Associate White House Counsel Neil Eggleston attended most of the interviews and took notes. Eggleston GJ 7/18/96 at 58-59. According to Eggleston, his notes have disappeared; consequently they have not been produced to the OIC. See id. at 65-67.

⁶³ Kingsbury GJ 6/27/96 at 14-15. Kingsbury testified that the GAO had difficulty getting a clear answer from the White House about whether interview notes existed and, in fact, whether they characterized White House responses to her inquiries as "decidedly disingenuous." Id. Kingsbury further described the failure of the White House to provide these materials as "not exactly honest" after learning that Stern and Podesta had taken notes of every single person they interviewed, and that those notes had been in the White House's possession. Id. at 16. For example, Kingsbury's report of her meeting with Eggleston on January 19, 1994 regarding backup documents for the White House Management Review report reflects the following:

Mr. Eggleston said that he didn't want to say there were no records, but at the same time, White House officials were concerned whether, since this report was an unusual thing for the White House to do, they would be setting a precedent in releasing working documents and notes which would inhibit carrying out similar reviews in the future.

Kingsbury's record of meeting with Eggleston 1/19/94, OIC Bates No. AJ-DC-00000725 at 731. In the same conversation with Eggleston, Kingsbury abandoned her efforts to obtain this information because she "did not know what we could conclude from a finding that the Report was somehow inconsistent with underlying documentation." Id. at 00000732.

⁶⁴ Watkins's handwritten interview notes 5/31/93, OIC Bates No. AJ-DC-00002083; see also Kingsbury GJ 6/27/96 at 23-24 (stating she had never seen the documents and believes the documents were provided to the GAO Office of General Counsel in connection with the Committee on Government Reform and Oversight's investigation).

⁶⁵ Kingsbury GJ 6/27/96 at 28-30. Kingsbury testified this information would have been

decided “we were not going to produce documents that were generated during the management review, but documents that had been collected by Podesta and Stern, if they were otherwise responsive, we might produce.”⁶⁶ The White House also did not provide the GAO with the Travel Office file from Foster’s office.⁶⁷

By way of contrast, Eggleston said they decided “to give more to the Public Integrity Section and not to rely on things like attorney-client privilege, which we ultimately did in connection with GAO” because “[i]t was a criminal investigation, and it was -- at the time it was the Department of Justice. It wasn’t an independent counsel; it was part of the executive branch of the government. And the decision was that we were going to cooperate as much as we could with [the] Public Integrity Section.”⁶⁸

IV. The House Committee's Investigation.

The House Committee concluded that the White House had not cooperated with its investigation. The House Committee found:

[I]ssuance of subpoenas was not sufficient to ensure the production of all relevant records. It became necessary for the committee to take the rare action, holding White House Counsel John M. [Jack] Quinn in contempt of Congress on May 9, 1996, by the committee. It was only after scheduling a May 30, 1996, House

relevant to the GAO's inquiry. Id. at 27-28. In fact, no investigative body knew of the existence of the Watkins Memorandum until it was produced to the House Committee on Government Reform and Oversight in 1996. H.R. Rep. No. 849, 104th Cong., 2d Sess. 157 (1996).

⁶⁶ Eggleston GJ 7/18/96 at 20-21.

⁶⁷ Kingsbury GJ 6/27/96 at 36-37. Kingsbury states that this information was also provided to the GAO by Congress. Kingsbury testified that the information contained in Foster's Travel Office file was material and relevant to the GAO inquiry, and fell within the parameters of the document requests the GAO made to the White House. Id.

⁶⁸ Eggleston GJ 11/18/97 at 26.

floor vote on the Resolution that the White House turned over 1,000 pages over which it initially had asserted were "subject to" executive privilege.

However the White House continued to withhold 2,000 pages of documents. President Clinton asserted a blanket claim of executive privilege, stalling for time throughout the summer of 1996. The White House Counsel's Office/Chief of Staff's Sherburne "team" finally provided the committee with access to the 2,000 pages of overly-redacted documents only when a second threat of a House floor vote on contempt of Congress was made.⁶⁹

The House Committee also found that:

- (1) The White House Counsel's Office "coordinated and controlled to the greatest extent possible, all investigations into this matter[;]"
- (2) Attorneys "debrief[ed] White House attorneys about their clients' depositions and in some cases provid[ed] information to the White House that was withheld from Congress[;]"
- (3) The White House Counsel's Office engaged in a "pattern of behavior . . . including unprecedented misuse of executive privilege . . . designed deliberately to obstruct all investigations and thereby avoid full disclosure of the facts surrounding the Travel Office firings[;]"
- (4) "The collective memory loss of dozens of employees [was] unconvincing and disturbing."⁷⁰ Witnesses testified "thousands of times" that they could not recall "the most basic and memorable information;"⁷¹ and
- (5) "[O]bstruction was conducted, overseen and encouraged by those at the 'highest levels' of the White House."⁷²

* * *

⁶⁹ H.R. Rep. No. 849, 104th Cong., 2d Sess. 9 (1996).

⁷⁰ Id. at 26.

⁷¹ Id.

⁷² Id. at 26-27.

APPENDIX B

This Appendix sets forth the historical background of the elimination of the declination clause from the statutory language of the Independent Counsel Reauthorization Act of 1994 ("Act"). The history of the declination clause's deletion is relatively clear. Consideration of the Act's reauthorization began shortly prior to Independent Counsel Lawrence E. Walsh's issuance of his final report on the Iran-Contra matter. Several observers anticipated that the declination clause would result in the publication of a final report that contained accusations of misconduct against individuals who had not been charged or convicted of criminal offenses. For example, Lt. Col. Oliver North's attorney testified before Congress:

The [Independent Counsel] intends to issue a report to do what he could not do in court. It will be a "final shot" -- a mammoth document assessing blame across government. But who can fight back -- who can amass the funds to rebut such a report? What about reputations and notions of fairness?¹

Thus, some suggested that the declination clause be modified or deleted to prevent what they perceived to be inappropriate prosecutorial conduct.

House Consideration -- The version of the reauthorization of the Act reported by the House Judiciary Committee for consideration by the House of Representatives (H.R. 811, 103d Cong.) retained the declination clause in section 594(h)(1)(B) unmodified.² The limited record of the House's initial consideration of the Act's reauthorization supports a congressional intent (at that time) to maintain the broad disclosures necessitated by the declination clause. This can be seen in the proposed amendment to section 594(h)(2), which was adopted by the House.

¹ 139 Cong. Reg. E660 (Mar. 17, 1993) (statement of the Honorable Henry J. Hyde) (reprinted testimony of Mr. O'Donnell).

² See H. R. Rep. 103-224, at 22, 29 (1993).

Prior to 1994, the Act authorized the Special Division to release to the public any materials the Court deemed "appropriate."³ As reported by the Judiciary Committee, H.R. 811 included a proposed amendment that would have authorized the Special Division to release materials it considered:

in the public interest, consistent with maximizing public disclosure, ensuring a full explanation of independent counsel activities and decision making, and facilitating the release of information and materials which the independent counsel has determined should be disclosed.⁴

The House's expressed intent was to provide greater guidance to the Court on materials to be released.⁵ The language demonstrates that the House envisioned disclosure of a comparatively comprehensive report -- one that maximized public disclosure -- whose content would turn, at least in part, on the independent counsel's judgment. When the House passed H.R. 811 on February 10, 1994, it contained this provision.⁶

Senate Consideration -- When the Senate Committee on Governmental Affairs reported the reauthorization bill's first version (S. 24, 103d Cong.) for the Senate's consideration, the declination clause again remained unchanged.⁷ Later that year, however, during consideration of S. 24 on the Senate floor, Senator Dole sought to amend the reauthorization bill to limit the scope of the independent counsel's final report. Senator Dole's amendment, adopted by the

³ 28 U.S.C. 594(h)(2), Pub. L. 100-191, 101 Stat. 1293, 1302 (1987).

⁴ H. Rep. No. 103-224, at 29 (1993).

⁵ Id. at 22.

⁶ 140 Cong. Reg. H442 (Feb. 10, 1994).

⁷ See S. Rep. 103-101, at 60 (1993).

Senate, changed the text of section 594(h)(1)(B) in two ways: (1) it struck the words "fully and completely"; and (2) it struck the declination clause.⁸

Senator Cohen, one of the bill's managers, explained the reason for the amendment's adoption this way:

Senator Levin and I would like to clarify something for the record so there will be a proper legislative history to this particular amendment.

. . . .

We believe the final report should be a simple declaration of the work of the independent counsel . . . [W]ith respect to cases in which the independent counsel had determined that no . . . indictment should be brought, [the amendment] preclude[s] that independent counsel from expressing an opinion or conclusion as to the culpability of any of the individuals involved.

. . . .

So the purpose of the amendment is quite clear, to restrict the nature of the report to the facts without engaging in either speculation or expressions of opinion as to the culpability of individuals unless that culpability . . . rise[s] to a level of an indictable offense.⁹

Senator Levin immediately reiterated the same point:

[T]he amendment we are accepting relative to the final report is, indeed, to try to avoid having independent counsel state conclusory opinions that the subject of an investigation engaged in criminal wrongdoing in the absence of bringing an indictment against that person.¹⁰

Senator Dole, the amendment's sponsor, explained its purpose that same day:

[W]e have modified the final report language, because Lawrence Walsh could not indict you or could not convict you, he would try to do it in the court of public opinion by filing some report, in effect venting all of his spleen. . . . I am pleased

⁸ 139 Cong. Rec. S15886 (Nov. 17, 1993).

⁹ Id.

¹⁰ Id.

that the managers of the bill, Senators Cohen and Levin, have accepted my amendment limiting the report's permissible scope.

. . . .

It is my hope that . . . the amendment limiting the permissible scope of the final report, will help inject some safeguards into the independent counsel statute so that future abuses can be avoided [W]e hope we have been able to make the changes there, maybe state some facts, but not opinions, not editorialize.¹¹

As Senator Dole said the next day:

This . . . amendment would retain the final report requirement, but would eliminate the language in the reauthorization bill that allows the independent counsel to describe, in the final report, the "reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel."

If retained, this language would have been an open invitation to independent counsels to editorialize on cases that they, for whatever reason, chose not to bring, smearing hard-earned reputations in the process.¹²

Reflecting further on his amendment in January 1994 (after the Iran-Contra final report was issued), Senator Dole reiterated his intent: "This amendment . . . was designed to ensure that future independent counsels will not resort to Walsh-style smear tactics in their final reports."¹³

Conference Report -- The reauthorization bill's competing House and Senate versions differed substantially on the final report requirement. The House version contained provisions that expanded the scope of public disclosure authorized for the Special Division and left the final report obligations of an Independent Counsel unmodified. The Senate, by contrast, left the Special Division's disclosure authorization unchanged and made two substantive changes to the final report language -- deleting "fully and completely" and the declination clause.

¹¹ Id. at S15887.

¹² 139 Cong. Rec. S15972 (Nov. 18, 1993).

¹³ 140 Cong. Rec. S41 (Jan. 25, 1994).

The conference committee resolved these two views as follows:

First, the committee deleted the House's proposed change to section 594(h)(2) relating to the Special Division. As the conference committee explained, the Special Division's decision to release the Iran-Contra report made clear that amending the provision to provide for greater public disclosure was unnecessary:

[T]he standards in the 1987 law on releasing the final report to the public are not overly restrictive, as evidenced by the special court's decision to release the final report in the Iran-Contra matter despite numerous motions by persons named in the report to repress all or portions of it. For this reason, the conferees have determined that additional statutory language encouraging disclosure is unnecessary.¹⁴

Second, the conference committee modified the proposed changes to section 594(h)(1)(B), retaining (as in the House bill) the language requiring an independent counsel to report "fully and completely," while deleting (as in the Senate bill) the declination clause. The conference explained its decision this way:

[I]n response to concerns about the proper scope of the final report, the conference agreement retains the requirement in the 1987 law that these reports include a full and complete account of the independent counsel's activities, but eliminates the requirement that the independent counsel explain the reasons for not prosecuting any matter.

. . . .

[Requiring a final report] is justified by the unique environment in which an independent counsel must operate -- without direct and ongoing supervision by senior Justice Department officials. It serves as an important check on independent counsel investigative and prosecutorial activities by requiring them to identify and explain their actions.

. . . .

¹⁴ H. Conf. Rep. 103-511, at 21 (1994).

The conference agreement reaffirms the duty of independent counsels to provide a full and complete description of their work. Congress continues to view this requirement as a key measure for insuring accountability. Under this provision, independent counsels are expected to provide a summary of the key steps taken in the investigatory and prosecutorial stages of their work and to explain the basis for their decisions.

....

The conference agreement eliminates the requirement that independent counsels explain, in every instance, their reasons for not prosecuting any matter within their jurisdiction The power to damage reputations in a final report is significant, and the conferees want to make it clear that the final report requirement is not intended in any way to authorize independent counsels to make public findings or conclusions that violate normal standards of due process, privacy or simple fairness.

The conferees believe that, in assessing whether an explanation should be provided with respect to a specific unindicted individual, an independent counsel should base the decision on whether it would be in the public interest for such information to be disclosed. The public interest encompasses a wide range of concerns which need to be carefully balanced, including understanding the basis for the independent counsel's decision not to indict; taking into account the extent to which the individual was central or peripheral to the independent counsel's jurisdictional mandate; exonerating the innocent; and protecting individual rights to due process, privacy and fairness. For example, it may be in the public interest to report that the evidence did not sustain the allegations that gave rise to the investigation or that the evidence demonstrates an individual's innocence.

With regard to an individual whose conduct was only tangential to that of the person for whom the independent counsel was appointed, an independent counsel should normally refrain from commenting on the reason for not indicting that person unless it is to affirm a lack of evidence of guilt. On the other hand, the conferees consider to be crucial a discussion of the conduct of the person for whom the independent counsel was appointed to office. This discussion should focus on the facts and evidence and avoid use of conclusory statements in the absence of an indictment. However, in the rare event that an indictment is forestalled because of an event beyond the control of the independent counsel,

public accountability may well require such independent counsel to express a professional opinion on whether the grounds for an indictment had been present.¹⁵

With these changes, Congress reauthorized the Ethics in Government Act, which remained in effect until expiration by its own terms on June 30, 1999.

* * *

¹⁵ Id. at 19-20 (emphasis supplied).

APPENDIX C

This Appendix describes the evolution of the Watkins Memorandum. Early drafts of the Watkins Memorandum described pressure from Mrs. Clinton. During a meeting with Watkins on September 8, 1993, Moore recorded information he received from Watkins to begin drafting a memorandum.¹ Moore's notes reflect that Watkins told Moore the following:²

H[arry]T[homason] ginned up *T[he] C[lient]*.³ HT told DW - TC thinks we need to fire them today. Thur. after meeting on H[ealth] C[are] T[ask] F[orce], TC was on the warpath → b/c OUR PEOPLE weren't there to serve The Pres. OUR PEOPLE / OUR PEOPLE . . . HT told DW - TC wonders why they aren't already gone.⁴

. . . .

Monday 5/17 . . . Mack said he had dinner w/ T[he] P[resident] & TC. → Mack: it is high on TC's radar screen. Message: full support & concurrence on terminating Travel Office Staff & DW would have been very negligent not to have. → (underlying message) . . . "McLarty approved." Stronger than approval. Relief b/c if DW did not take action there would be hell to pay.⁵

¹ See GJ 95-2 Exh. 69-A.

² Moore testified that his notes were quoting the information Watkins was providing him. Moore GJ 6/27/96 at 36.

³ Matt Moore testified that "TC" stood for "The Client," which referred to Mrs. Clinton. *Id.* at 35, 38 (italics supplied). David Gergen attributes the phrase "ginned up" regarding Mrs. Clinton to McLarty. Gergen GJ 7/1/96 at 11.

⁴ GJ 95-2 Exh. 69-A at 3 (emphasis in original; italics supplied). Watkins stated that he did not recall Mrs. Clinton being on the "warpath," and he did not remember Thomason telling him that Mrs. Clinton was "wondering why not already gone." Watkins Int. 11/22/96 at 39. Later, however, Watkins stated that he may have told his staff that Mrs. Clinton was on the warpath. *Id.* at 22. Thomason testified that he did not remember making this statement to Watkins, although it is possible that he did so. He did recall telling Watkins that Mrs. Clinton said, "If there is something wrong going on, it should be dealt with." Thomason GJ 7/17/96 at 142.

⁵ GJ 95-2 Exh. 69-A at 4 (emphasis in original). Watkins testified in 1995 that McLarty "said something like, 'Well, I had dinner with the President and Mrs. Clinton last night, and it was certainly on her antennae or on her wave length or something.'" Watkins GJ 2/28/95 at 56. When McLarty was asked if he recalled using the phrase "radar screen," he said, "I think that the time had come for action, but I don't recall saying it in that way." McLarty House Depo.

....

TC said HT can get a structure that will do it more efficiently and can put that structure in place in an hour's time.⁶

....

Counsel's office knew what was going on & knew where the pressure was coming from.⁷

....

Pressure from TC FORCED it to be handled so quickly & w/o proper deliberation. F[oster] & P[atsy] T[homasson] & D[avid] W[atkins]: careful not to blame TC.⁸ F[oster] spoke specifically [about] what would be said in the interview. *DW went to see F 5 mins after the DW interview. They specifically asked if DW wanted to offer anything else about TC's involvement? DW said NO. PT: Investigators asked [about] how & when decision was made & if made prior to Mon & Tues. the 17th & 18th. "Lots of pressures to make it earlier." "Don't have anything."⁹

....

Bombardments of pressure from HT running into him in the hall, Jeff Eller, numerous times, *TC via F* - a frequent bombadeer [sic]. Parroting TC by F. Cannot say F was speaking from immediately prior or numerous inquiries from TC.¹⁰

7/12/96 at 30.

⁶ GJ 95-2 Exh. 69-A at 6.

⁷ Id. at 7 (emphasis in original). Watkins stated that this referred to Foster's knowledge of Mrs. Clinton's concerns. See Watkins Int. 11/22/96 at 40.

⁸ Moore testified this meant to be careful not to blame the client, meaning Mrs. Clinton. See Moore GJ 6/27/96 at 52 (italics supplied).

⁹ GJ 95-2 Exh. 69-A at 8 (emphasis in original); Moore GJ 6/27/96 at 52 (Moore interpreting this section of his notes).

¹⁰ GJ 95-2 Exh. 69-A at 8 (emphasis in original; italics supplied). Watkins stated that he did not know if Thomason or Foster had spoken to Mrs. Clinton immediately prior to each occasion when they made comments to him. See Watkins Int. 11/22/96 at 41.

....

Background - atmosphere that driving force were First Lady, Eller, Harry ¹¹

Moore used the September 8 notes to prepare a typed draft of the memorandum.¹² The first undated typed draft of the memorandum did not indicate the intended recipient of the memorandum, but indicated the subject to be, "Response to Internal Travel Office Review."¹³ The draft indicates that it was Watkins's intention to review and reorganize the Travel Office over a period extending from February through October. Those plans, however, were immediately overruled by "the intense pressures" surrounding the Travel Office matter. "[W]hen pressure began to build for immediate action in the Travel Office, the long-term plans were short-circuited."¹⁴ This draft did not identify the pressure's source or nature. The draft concluded with a statement that Watkins "would have much preferred to have [his] staff carefully review the Travel Office and formulate a detailed business plan for the new fiscal year. This proved impossible, though, when pressure for action became irresistible. It forced me to accept hastily formulated plans for hasty, inadvisable action."¹⁵

¹¹ GJ 95-2 Exh. 69-A at 11.

¹² Moore GJ 6/27/96 at 53.

¹³ GJ 95-2 Exh. 69-B at 1. Handwritten into this typed subject title for apparent later insertion is "White House" and "Management" so that the title as edited would read "Response to Internal White House Travel Office Management Review." Id.

¹⁴ Id. at 2.

¹⁵ Id. at 8.

On September 15, Moore and Watkins met to discuss the first draft, and Moore took notes of Watkins's comments.¹⁶

Where was any pressure, where from. Where was it coming from? Continuous, daily basis. Check regularly (daily to get feedback from TC[])] Phone convers. Fri night from TC Make pressure clear . . . Must be obvious - need for / pressure for swift & clear action . . . Frequent basis (pressure) from F & H[arry] T[homason] & the C[hief] O[f] S[taff] [McLarty]. Mention COS's role in meeting w/ P[atsy]LT[homasson] & DW on Monday morning following dinner w/ TC. . . . Message from phone conv[ersation] Fri. night w/ TC. Clear terms to TAKE ACTION.

Soul cleansing. My first attempt to be sure the record is straight. I have been intention[ally] vague in all my conversations w/ Podesta and internal investigators.¹⁷

*Tried to be as protective and as vague as possible - up to this point.*¹⁸

After Moore's September 15 conversation with Watkins, Moore prepared another undated draft.¹⁹ This second draft contained the following relevant language:

It is my first attempt to be sure the record is straight, something I have not done in previous conversations with investigators -- where I have been as protective and vague as possible.²⁰

. . . .

[T]he First Lady took interest in having the Travel Office situation resolved quickly, following Harry Thomason's bringing it to her attention. Thomason briefed the First Lady on his suspicion that the Travel Office was improperly

¹⁶ Moore GJ 6/27/96 at 55-57.

¹⁷ GJ 95-2 Exh. 69-D at 1 (emphasis in original).

¹⁸ Id. at 2 (italics supplied).

¹⁹ Moore GJ 6/27/96 at 57.

²⁰ GJ 95-2 Exh. 69-E at 1. Watkins stated that his reference to investigators was limited solely to the White House Travel Office Management Review. See Watkins Int. 11/22/96 at 41.

funneling business to a single charter company, and told her that the functions of that office could be easily replaced and reallocated.²¹

Once this made it onto the First Lady's agenda, Vince Foster became involved, and he and Harry Thomason regularly informed me of her attention to the Travel Office situation -- as well as her insistence that the situation be resolved immediately by replacing the Travel Office staff.²²

Foster regularly informed me that the First Lady was concerned and desired action -- the action desired was the firing of the Travel Office staff. On Friday, while I was in Memphis, Foster told me that it was important that I speak directly with the First Lady that day. I called her that evening and she conveyed to me in clear terms that her desire for swift and clear action to resolve the situation. She mentioned that Thomason had explained how the Travel Office could be run after removing the current staff -- that plan included bringing in World Wide Travel and Penny Sample to handle the basic travel functions, the actual actions taken post dismissal --, and in light of that she thought immediate action was in order.²³

On Monday morning, you [McLarty] came to my office and met with myself and Patsy Thomason. At that meeting you explained that this was on the First Lady's "radar screen." The message you conveyed to me was clear: immediate action must be taken. I explained to you that I had decided to terminate the Travel Office employees, and you expressed relief that we were finally going to take action (to resolve the situation in conformity with the First Lady's wishes). We both knew that there would be hell to pay if, after our failure in the Secret Service situation earlier, we failed to take swift and decisive action in conformity with the First Lady's wishes. You then approved the decision to terminate the Travel Office staff²⁴

In light of the First Lady's insistence for immediate action and your concurrence, the abrupt manner of dismissal, from my perspective, was the only option.²⁵

²¹ GJ 95-2 Exh. 69-E at 1-2.

²² Id. at 2.

²³ Id. (emphasis supplied).

²⁴ Id. (emphasis supplied). The "Secret Service" reference was to an article entitled, "The Not-So-Secret Service," Newsweek, Apr. 5, 1993, at 43, which credited the Secret Service detail assigned to the First Family with spreading "rumors about the Clintons' private life." McLarty GJ 7/31/96 at 13, 44.

²⁵ Id. at 3 (emphasis supplied).

....

At this point in the sequence of events, with the current plan approved by the First Lady and yourself including resort to World Wide Travel, it would have unnecessarily heightened confusion to recruit an unknown travel service.²⁶

....

While I believed that my original plan to carefully review the Travel Office would best serve the White House, when I spoke with the First Lady on Friday night, May 14, she cited Thomason's plan as support for the need for immediate action.²⁷

....

I would have much preferred to have my staff carefully review the Travel Office and make a detailed business plan for the new fiscal year. This proved impossible, though, when the pressure for action from the First Lady and you became irresistible. This demand for immediate action forced me to accept hastily formulated plans for hasty, inadvisable action.²⁸

....

I think all this makes clear that the Travel Office incident was driven by pressures for action originating outside my Office. If I thought I could have resisted those pressures, undertaken more considered action, and remained in the White House, I certainly would have done so. But after the Secret Service incident, it was made clear that I must more forcefully and immediately follow the direction of the First Family. I was convinced that failure to take immediate action in this case would have been directly contrary to the wishes of the First Lady, something that would not have been tolerated in light of the Secret Service incident earlier in the year.²⁹

²⁶ Id. at 6.

²⁷ Id. at 7 (emphasis supplied).

²⁸ Id. at 8 (emphasis supplied).

²⁹ Id. at 9 (emphasis supplied).

Later drafts of the memorandum continued to reflect that Watkins felt pressured by the First Lady and others. During subsequent discussions with Watkins, Moore took the following notes:

1st [paragraph] in conclusion -- wrong tone.

Did not think about remaining in the WH. DW thought/felt extreme pressure from the highest levels & felt that action should be taken b/c of perception about foot dragging.³⁰

. . . .

Could possibly have dug his heels in, but DW too felt he could not win that argument thus he acquiesced in his own mind.

. . . .

No pressure from Mack.³¹

From these discussions and notes, as well as Watkins's handwritten suggestions on a copy of the second draft, Moore prepared a third draft that for the first time is addressed to Chief of Staff Mack McLarty.³² Watkins told Moore to address the memorandum to McLarty.³³ This draft also included the following language:

I think all this makes clear that the Travel Office incident was driven by pressures for action originating outside my office. I felt extreme pressure from the First Lady and felt that action should be taken because of the perception about foot-dragging.³⁴

³⁰ GJ 95-2 Exh. 69-I; Moore GJ 6/27/96 at 64 (emphasis supplied).

³¹ Id. (emphasis in original).

³² GJ 95-2 Exh. 69-J at 1; GJ 95-2 Exh. 69-H.

³³ Moore GJ 6/27/96 at 67.

³⁴ GJ 95-2 Exh. 69-J at 9 (emphasis supplied).

The draft also noted that McLarty expressed "relief" when advised by Watkins of his decision to terminate the Travel Office employees.³⁵ This third draft contained the following relevant language, which included Watkins's handwritten insertions made on a copy of the second draft:

I would have much preferred to have my staff carefully review the Travel Office and make a detailed business plan for the new fiscal year. This proved impossible, though, when the pressure for immediate action from the First Lady and others became irresistible.³⁶

This draft removed, from the conclusion, language regarding Watkins's fear that he could resist the pressures to fire the Travel Office employees only at the expense of his job in the White House. It also made the point that the firings were justified and that there was pressure to proceed quickly: "[T]he procedures were so bad and the grounds for dismissal so clear, that delay was more difficult and acquiescence in the call for action seemed proper. Numerous problems were discovered, the audit results were clear, and sufficient cause for dismissal appeared to be present."³⁷

Later drafts reflected a new recognition that the First Lady may have been unaware of the pressure Watkins felt from her. Moore revised the memorandum again, creating a fourth draft, and also printed out a fifth draft that included only the first three pages of the fourth draft revised to reflect the handwritten comments of Watkins and Moore on that fourth draft.³⁸ The fifth draft

³⁵ GJ 95-2 Exh. 69-H at 2.

³⁶ GJ 95-2 Exh. 69-J. The underscored words were handwritten on the draft memorandum by Watkins. GJ 95-2 Exh. 69-H at 8; Moore GJ 6/27/96 at 63.

³⁷ GJ 95-2 Exh. 69-J at 9 (emphasis supplied).

³⁸ See Moore GJ 6/27/96 at 69-70 (identifying the handwriting) and Moore GJ 6/27/96 at 72-74 (agreeing that this draft represents the typewritten incorporation of the notes on different

was ultimately incorporated into a complete sixth draft in which Watkins, although still claiming that he felt pressure from the First Lady -- pressure (1) that "she wanted us to just do it," (2) that in his May 14 telephone conversation with her, "she conveyed to me in clear terms her desire for swift and clear action to resolve the situation"; and (3) that "she thought that immediate action was in order"³⁹ -- contended that the "pressure" was "perhaps unknown to the First Lady."⁴⁰

The sixth draft's "Conclusion" section contained similar language about the First Lady's intention, allowing that while Watkins "felt extreme pressure from the First Lady," this pressure had been "perhaps accentuated beyond the [sic] her intention by the surrounding circumstances."⁴¹ Watkins insisted that no one suggested to him that he include any language that would deflect the impact of earlier language in the memorandum regarding Mrs. Clinton's involvement.⁴² In marking up the sixth draft, however, Watkins questioned whether the passage's tone and language about the pressure being beyond "her intention" was "too defensive."⁴³ Finally, while the third draft cites Travel Office procedures, the audit results, and the numerous problems discovered as sufficient cause for Travel Office staff's dismissal, the sixth draft adds that

copies of the former draft, and that Moore only printed the first three pages of the fifth draft).

³⁹ GJ 95-2 Exh. 69-O at 3. The underscored language above appears on the draft memorandum in Moore's handwriting. See Moore GJ 6/27/96 at 73.

⁴⁰ GJ 95-2 Exh. O at 2.

⁴¹ Id. at 10.

⁴² Watkins 6/13/00 Int. at 2.

⁴³ GJ 95-2 Exh. 69-O at 10. Moore GJ 6/27/96 at 75.

Watkins "did feel that in light of the KPMG report that sufficient negative data was uncovered that would possibly justify our swift and hasty management action."⁴⁴

Moore prepared the seventh draft, which consisted of the last page of the sixth draft revised to include the notes written on the sixth draft. An identical copy of this page was produced at the time and notes were written on each copy.⁴⁵

Moore soon prepared an eighth draft based on his discussions with Watkins as well as Patsy Thomasson's notes on the sixth and seventh drafts. This eighth draft contained a new paragraph in the "Background" section (inserted at Thomasson's suggestion⁴⁶), stating that the final decision to fire the Travel Office staffers was "justified" because of the Peat Marwick findings.⁴⁷ The paragraph states as follows:

Despite the pressure to act on scant information, the Peat Marwick report was what finally convinced me that the urged action was appropriate and necessary. KPMG audited the Travel Office and provided my Office a draft report on Sunday; unfortunately, however, KPMG could not perform a complete audit because sufficient records to conduct an audit were not kept by the Travel Office staff. Thus, the audit could not document fraud or theft, but it was clear from their restricted review that the lack of management activity justified the terminations.⁴⁸

The eighth draft is also significant because the "Conclusion" section omits a paragraph that had been in some form in previous drafts going back to the third draft where the language "I

⁴⁴ GJ 95-2 Exh. 69-O at 10 (emphasis supplied). This addition to the sixth draft was the result of the inclusion of notes written on the fourth draft. See GJ 95-2 Exh. 69-L at 9 and 69-M at 9.

⁴⁵ GJ 95-2 Exh. 69-P; Moore GJ 6/22/96 at 77-78.

⁴⁶ GJ 95-2 Exh. 69-O at 3. See Thomasson GJ 7/24/96 at 142.

⁴⁷ GJ 95-2 Exh. Q at 10.

⁴⁸ Id. at 3.

felt extreme pressure from the First Lady" had been inserted. Moore testified in the grand jury that he did not know why the paragraph was omitted, but assumed that Watkins told him to take it out.⁴⁹

The memorandum's ninth and final draft was addressed as a "Memorandum For Counsel," yet remained undated.⁵⁰ This draft eliminated language going back to the second draft that the memorandum was Watkins's first attempt "to be sure the record is straight, something I have not done in previous conversations with investigators -- where I have been as protective and vague as possible."⁵¹ Watkins ultimately signed and dated this draft, November 15, 1993.⁵² A copy of the final signed and dated Watkins Memorandum is attached to this Appendix.

* * *

⁴⁹ Moore GJ 6/27/96 at 78-80.

⁵⁰ GJ 95-2 Exh. 69-T. Moore testified he thought he worked on the document's final draft, but that at some point he handed off the entire project to Watkins's attorney Ty Cobb. Moore GJ 6/27/96 at 80-82. Cobb told this Office that he had no conversations about the Watkins Memorandum with the White House Counsel's Office following his first receipt of a draft on September 29, 1993 through its final draft on November 15, 1993. Cobb Int. 6/19/00 at 1-2.

⁵¹ See, infra, complete text of final version of Watkins Memorandum.

⁵² GJ 95-2 Exh. 69-T.

APPENDIX D

This Appendix sets forth the basic facts concerning the production of the Watkins Memorandum. This memorandum was not produced to any investigative body until January 1996, more than two years after GAO and the Department of Justice first began their investigations of the Travel Office firings. It was the production of this memorandum in January 1996 that led to the expanded jurisdiction of this Office to investigate the statements of Mr. Watkins and Mrs. Clinton regarding Mrs. Clinton's role in the decision to fire the Travel Office employees.

I. The Watkins Memorandum Was Produced to the OIC in January 1996.

The Watkins Memorandum first came to light as a result of a December 19, 1995 memorandum distributed by the White House Counsel's Office to all White House employees in response to a House Committee request for the production of records relating to the Travel Office matter.¹ Nellie Doering, a career government employee who had worked in the White House Office of Administration for 40 years,² saw the December 19 memorandum on December 21, and told Office of Administration Counsel Bruce Overton, "[t]here are White House Travel Office files in Patsy [Thomasson]'s files, and they should be reviewed."³ Doering knew this because in mid-1995 Thomasson had been transferred to a new position within the Administration, and Doering had assisted in archiving and indexing Thomasson's existing records.⁴ Doering recalled placing random documents into folders marked "Travel Office" in

¹ Sherburne, N. Williams, and Yarowsky Memorandum 12/19/95, OIC Bates No. 442-DC-00006608.

² Doering GJ 6/11/96 at 5-6.

³ Id. at 20.

⁴ Id. at 5-7.

July or August 1995.⁵ As a result of Doering's contact with Overton, Thomasson's archived records were eventually reviewed in late December 1995 by Nelson Cunningham, the General Counsel for the Office of Administration and a former federal prosecutor.⁶ Cunningham reviewed one particular series of four folders entitled "White House Travel Office," and realized "that there were documents here that were plainly responsive to the document request."⁷ Cunningham notified Associate White House Counsel Natalie Williams, who reviewed that same folder and pulled out the Watkins Memorandum.⁸ The "Watkins Memorandum" was then produced to the House Committee on January 3 and to the OIC on January 4, 1996.⁹ Although

⁵ Id. at 16. Bruce Overton, a career attorney with the White House Office of Administration, was instructed by the White House Counsel's Office to refuse to answer any questions about the White House Counsel's Office discussions with him regarding the discovery of the Watkins Memorandum. Overton GJ 6/11/96 at 28-29. Lisa Caputo was also instructed by the White House Counsel's Office to refuse to answer any questions on grounds of attorney-client privilege regarding the discussions she and others had with the First Lady about the Watkins Memorandum in January 1996, while Mrs. Clinton was preparing for her national book tour, and her staff was discussing how she should respond to anticipated questions about the discovery of the Watkins Memorandum. Caputo GJ 7/31/96 at 41-42.

⁶ Cunningham GJ 6/11/96 at 12. Overton carried Thomasson's boxes to Cunningham's office with a note saying that "there was at least one memorandum that would be responsive to the request." Overton GJ 6/11/96 at 23-26. On January 2, 1996, Cunningham and Overton discussed the David Watkins document that was found in Thomasson's box for the first time and agreed it was responsive. Id. at 31-32.

⁷ Cunningham GJ 6/11/96 at 12.

⁸ See id. at 12-18. The White House Counsel's Office instructed Cunningham to invoke attorney-client privilege and refuse to answer when he was asked to discuss his interactions with White House Counsel's Office attorney Natalie Williams regarding the Watkins Memorandum. Id. at 19. Likewise, Natalie Williams invoked both executive and attorney-client privileges and refused to answer questions regarding conversations she had regarding the memorandum with White House Counsel's Office attorney Jane Sherburne. N. Williams GJ 6/11/96 at 31.

⁹ Letter from John M. [Jack] Quinn, Counsel to the President, to the Honorable William F. Clinger Jr., Chairman of the House Committee on Government Reform and Oversight 1/17/96, OIC Bates No. 442-DC-00006571 at 6572, 6576.

the "Watkins Memorandum" clearly fell within previous subpoenas and requests for documents during 1994 and 1995 by the OIC, Congress, and the Department of Justice,¹⁰ Thomasson testified that she had forgotten about the memorandum, and consequently did not alert anyone to its existence prior to its discovery in her files.¹¹

After the draft memorandum's production, all related additional drafts and documents were subpoenaed from Watkins and Moore by the OIC and the House Committee.¹² Watkins and Moore, through counsel, asserted attorney-client privilege.¹³ Moore subsequently testified that during the memorandum's preparation he did not have an attorney-client relationship with Watkins.¹⁴ In Moore's view, and despite his admission that he knew that no attorney-client privilege applied, Congress was wrong to hold him and the others in contempt because Congress

¹⁰ See Memorandum from Eggleston to Thomasson 4/5/95, OIC Bates No. 442-DC-00006602 and Memorandum from Joel Klein to all Executive Office of the President staff 9/19/94, OIC Bates No. 442-DC-00006604.

¹¹ See Thomasson GJ 7/24/96 at 149. Watkins shared drafts with only two people in the White House -- Matt Moore and Patsy Thomasson. Moore assisted Watkins in drafting seven and possibly eight different versions of the memorandum. Some time in the Fall of 1993, Watkins gave two of the drafts to Patsy Thomasson to review. Thomasson testified that she looked at the drafts but could not recall ever speaking in detail to Watkins about the memorandum other than to tell Watkins not to write it. Thomasson further testified that she did not tell anyone else about the memorandum. Id. at 222-24.

¹² Grand Jury 95-2 Subpoena No. D572 (May 21, 1996)(issued to William David Watkins demanding any and all versions of the Watkins Memorandum); Grand Jury 95-2 Subpoena No. D573 (May 21, 1996)(issued to Matthew L. Moore demanding the same).

¹³ Moore GJ 4/28/99 at 26.

¹⁴ Moore GJ 6/20/96 at 66.

bore the burden of "trying to resolve the attorney-client privilege."¹⁵ On May 23, 1996, Watkins's counsel agreed to produce all the memorandum's drafts to the OIC, with one exception -- a redlined version containing notes of Watkins's previous counsel, Ty Cobb.¹⁶ The OIC agreed that this production would not constitute a waiver of Watkins's asserted attorney-client privilege with Moore.¹⁷ In the end, Watkins never produced the additional drafts to Congress, although he produced them to the OIC.¹⁸

II. The White House Failed to Produce The Memorandum Until January 1996 Even Though it Was Responsive to Numerous Pending Requests For Production.

At the time the Watkins Memorandum was created, one of the individuals working on its creation, Matt Moore, was also responsible for responding to outstanding document requests from the Department of Justice and the General Accounting Office. In March 1993, Matt Moore went to work for David Watkins in the Office of Management and Administration.¹⁹ Moore had a significant role in gathering White House documents for review by the GAO for its

¹⁵ Moore GJ 4/28/99 at 26.

¹⁶ See Letter from Robert J. Mathias, Esq., to John D. Bates, Esq., Eric A. Dubelier, Esq., and Roger M. Adelman, Esq. (May 23, 1996).

¹⁷ Id.

¹⁸ GJ 95-2 Exh. 69-F is the version of the Watkins Memorandum first turned over to Congress, which was discovered among materials that had been archived from Patsy Thomasson's office. Thomasson GJ 7/24/96 at 147-48. It contains Thomasson's handwriting. Moore GJ 6/27/96 at 59-62; Thomasson GJ 7/24/96 at 142-44. Letter from Jack Quinn, Counsel to the President to the Honorable William F. Clinger, Chairman of the Committee on Government Reform and Oversight 1/17/96, OIC Bates No. 442-DC-00006571 (outlining the process by which the Watkins Memorandum was distributed and to whom). Letter from Robert J. Mathias, Esq., to John D. Bates, Esq., Eric A. Dubelier, Esq. and Roger M. Adelman (May 23, 1996).

¹⁹ Moore GJ 6/20/96 at 7.

investigation of the Travel Office firings.²⁰ By late September 1993, Stuart Goldberg of the Department of Justice's Public Integrity Section had also initiated a criminal investigation of Billy Dale, Harry Thomason, and Darnell Martens.²¹ In early 1994, Matt Moore was assisting Neil Eggleston in gathering documents for Goldberg.²²

On December 14, 1993, Neil Eggleston sent a memorandum to Bruce Lindsey regarding the Travel Office investigation, a copy of which was found in Matt Moore's files, although he denied ever seeing it.²³ A portion of this memorandum stated, "The Department of Justice has orally requested documents relating to the activities of Harry Thomason and Darnell Martens involving the White House. The Department is apparently pursuing whether either may have violated the criminal conflict of interest statute."²⁴

On March 14, 1994, Stuart Goldberg sent Eggleston a letter memorializing and formalizing his earlier oral request for information relating to Harry Thomason and Darnell Martens.²⁵ This request soon came to Moore's attention.²⁶ As a result, on April 4, 1994, Matt Moore prepared a memorandum to Neil Eggleston regarding "Documents Relating to Harry

²⁰ Id. at 8-10.

²¹ Eggleston House Depo. 6/3/96 at 45-47; Moore GJ 2/17/99 at 73-74.

²² Eggleston House Depo. 6/3/96 at 75-76; Moore GJ 2/17/99 at 98.

²³ Moore GJ 3/10/99 at 17-18.

²⁴ Memorandum from Eggleston to Lindsey 12/14/93, OIC Bates No. 542-DC-00019312.

²⁵ Letter from S. Goldberg to Eggleston 3/14/94, OIC Bates No. 542-DC-00019314 - 19315.

²⁶ Id. (with a handwritten note to "Matt" asking him to "verify this for [him]" signed "Neil") (emphasis in original).

Thomason.²⁷ Moore testified that this memorandum was prepared on Watkins's orders.²⁸ The memorandum referenced Neil Eggleston's "request for documents . . . regarding Harry Thomason and his presence in the White House."²⁹ Moore's memorandum stated that Patsy Thomasson, David Watkins, and other Office of Management and Administration employees either: 1) "had no documents relevant to the inquiry or to Mr. Thomason . . ."; 2) "turned over any documents . . . to Todd Stern" pursuant to the White House Travel Office Management Review; or 3) "that the only document they had ever had was Mr. Thomason's report." The last sentence of Moore's memorandum contained a certification that was unique to Moore's memorandum: "Likewise, I know of no documents in my possession, or ever in my possession, responsive to the request."³⁰

On April 5, 1994, Neil Eggleston sent a form memorandum and certification to Matt Moore and several other White House employees entitled "TRAVEL OFFICE INQUIRY -- HARRY THOMASON AND DARNELL MARTENS."³¹ The memorandum/certification

²⁷ Memorandum from Moore to Eggleston 4/4/94, OIC Bates No. 542-DC-00028671 (emphasis in original).

²⁸ Moore House Depo. 3/26/95 at 143-44.

²⁹ Memorandum from Moore to Eggleston 4/4/94, OIC Bates No. 542-DC-00028671.

³⁰ Id. According to Moore's House and Grand Jury testimony, sometime between February/ March and June 1994, Moore put all of his White House computer based versions of the Watkins Memorandum (including some from Moore's White House hard drive) onto one diskette, and, along with all his drafts and all his notes turned them over to Watkins. "I believed . . . that he, you know, was the person whose records they should appear in." Moore GJ 6/27/96 at 85.

³¹ Memorandum from Eggleston to several White House employees 4/5/94, OIC Bates No. 542-DC-00019258 at 19258, 19281-19282 (emphasis supplied); Memorandum from Eggleston to Moore 4/5/94, OIC Bates No. 542-DC-00019274 (with Matt Moore's certification that he had no responsive documents).

requested the documents that had been requested in Goldberg's March 14, 1994 letter. The memorandum states as follows:

As you know, the Department of Justice is continuing its investigation into the activities of Harry Thomason and Darnell Martens at the White House in connection with its ongoing investigation of the White House Travel Office.

As part of that investigation, the Department has requested documents relating to the activities of Messrs. Thomason and Martens at the White House. Please conduct a careful and complete search of your files and provide me with any and all documents relating or referring to Harry Thomason and Darnell Martens, excluding those documents relating solely to the Presidential Inauguration. This request includes all documents of any type, written or electronic, and duplicate copies as well as originals.

All documents must be provided to me by the close of business on Thursday, April 7, 1994.

If you do not have any responsive documents, please complete the certification below and return this memorandum to me. My room number is OE0B125.

If you have any questions, please contact me at 6-7901.

W.N.E.

At the bottom of this form document under Eggleston's initials is the following sentence in quotation marks, "I have searched my files, and I have no documents responsive to the requests set forth in this memorandum."³² There is a blank space for a signature underneath this final sentence. Eggleston said Moore was "the one who physically took [the individual certifications] to people to get them signed and brought them back to me," because Eggleston said he "was worried that [if] I had sent it in inter-office mail, I would never see it again."³³

³² Memorandum from Eggleston to several White House employees 4/5/94, OIC Bates No. 542-DC-00019258; Memorandum from Eggleston to Moore 4/5/94, OIC Bates No. 542-DC-00019274 (with Matt Moore's certification that he had no responsive documents).

³³ Eggleston GJ 12/9/97 at 57.

Matt Moore signed his certification.³⁴ Watkins never signed and returned the copy of the certification that had been left for him on his desk.³⁵ Patsy Thomasson, though, signed her certification, claiming that she had searched her files and found no responsive documents.³⁶ Thomasson later testified that she did not know that the Watkins Memorandum remained in her possession from the Fall of 1993 until the end of 1995 because "I moved offices . . . twice during that period of time. I moved once in October of 1993, and then I moved again in January 1994. So every time I moved I had to box up everything that was in my office. And, quite frankly, I never even unpacked all my boxes."³⁷ Contrary to her certification that she had "searched [her] files," Thomasson admitted: "I didn't go through every piece of paper, I let [my staff assistant] do all that work. And I didn't know I had [the Watkins Memorandum draft]. I didn't know I had it in April of '94, I didn't know I had it in April -- May of '95."³⁸

³⁴ Memorandum from Eggleston to Moore 4/5/94, OIC Bates No. 542-DC-00019274 (with Matt Moore's certification that he had no responsive documents); see also Eggleston GJ 12/9/97 at 63-64 (reviewing exhibit and agreeing that Moore signed his certification).

³⁵ See Eggleston GJ 12/9/97 at 64-65. A version of the form certification sent to Watkins was produced to this Office, but unlike the signed versions produced for Patsy Thomasson and Matt Moore, Watkins's version was not signed by him. See GJ 97-1 Exh. 79; Eggleston GJ 12/9/97 at 67 (identifying document). Eggleston testified that he had no recollection of being informed that there had been a problem getting Watkins to sign his certification, and that if there had been such a problem, Eggleston would have expected Moore to tell him. Eggleston GJ 12/9/97 at 67-68.

³⁶ Eggleston GJ 12/9/97 at 63-64. This certification was clearly not accurate, given that the Watkins Memorandum ultimately produced in January 1996, was found among Patsy Thomasson's files by White House records assistant Nellie Doering in December 1995. N. Williams GJ 6/11/96 at 12-14.

³⁷ Thomasson GJ 7/24/96 at 149.

³⁸ Id. at 161.

Moore claims that in the Fall of 1993, when the GAO asked for all Travel Office related documents, Watkins went to Moore and asked him to go to Eggleston and find out if the GAO request required production of the Watkins Memorandum.³⁹ Moore said that he then went to Eggleston and described the Watkins Memorandum "in generalities" by asking whether the GAO wanted documents created before or subsequent to the July 2, 1993 White House Travel Office Management Review.⁴⁰ Moore said that Eggleston's "response was very clear and absolute that they were looking for primary documents as opposed to secondary documents. And by primary, I mean more of the documents that led up to the decision, more of the documents that show what happened at the time, and not documents that rehash the same analysis."⁴¹ Moore said that Eggleston told him they did not need to produce any documents created after the GAO's August 17, 1993 request date.⁴² Moore's explanation for discussing the memorandum in veiled terms rather than showing it to Eggleston is that Moore "treated it with a certain level of confidentiality" equivalent to the level of an attorney-client privileged document, even though

³⁹ Moore GJ 2/17/99 at 86-87.

⁴⁰ Id. at 86. Moore could not remember whether it was his or Watkins's idea to speak to Eggleston about the document only "in generalities." Moore GJ 8/18/99 at 54-55. When Moore was trying to remember whose idea it was to approach Eggleston about the document "in generalities," Moore also seemed to question whether it was he or Watkins who came up with the idea of approaching Eggleston in the first place, "to the degree I have a memory, it was, it sort of centers around the need to have this conversation. But part of that need to have the conversation was for it to be in generalities. So, that idea either came from David or I came up with it on my own. If it came from David, it included the idea of speaking in generalities. If I came up with it on my own, then I conceived of it to speak of it in generalities." Moore GJ 8/18/99 at 54-55.

⁴¹ Moore GJ 2/17/99 at 88.

⁴² Id. at 90-91.

Moore agreed that he did not draft the document for Watkins in any capacity as an attorney so that it accorded such privilege.⁴³

Eggleston flatly denied he had any sort of discussion with Moore, and claimed that if Moore had engaged him in any such discussion, Eggleston would have "paid an enormous amount of attention to that" and asked to see the document Moore was concerned about.⁴⁴ Similarly, when Eggleston was questioned about what he knew of the Watkins Memorandum, he claimed he never saw it while in the White House, and that no one had ever suggested to him Mr. Watkins was writing or contemplating writing such a memorandum.⁴⁵ Moore explained that he did not produce the Watkins Memorandum to the Department of Justice because he looked at it as a Vince Foster related document, rather than one pertaining to Harry Thomason.⁴⁶ Thus, Moore testified that when other requests for documents were made, it did not occur to him that the draft memorandum might be responsive.⁴⁷

⁴³ Moore GJ 8/18/99 at 52-53, 55-57; Moore GJ 6/27/96 at 7-8 (stating in testimony he "didn't believe [he] was acting as [Watkins] personal attorney," and that he was preparing the memorandum "[j]ust as a friend"); Moore stated the he "never practiced law in a personal capacity in any relationship [he] had with Mr. Watkins," and he does not recall Watkins asking him for any legal advice at any time in connection with the preparation of the "Watkins Memorandum." *Id.* at 91; Moore GJ 6/27/96 at 85 (testifying that he believed that "the document was a personal document to [Watkins] and a privileged -- his personal document"); Moore GJ 6/27/96 at 9, 95 (stating that Watkins told Moore to write "privileged and confidential" on the front of the draft).

⁴⁴ Eggleston GJ 12/9/97 at 58-59, 71.

⁴⁵ Eggleston GJ 7/18/96 at 113.

⁴⁶ Moore GJ 8/18/99 at 36-37.

⁴⁷ Moore GJ 6/27/96 at 128-31, 133.

Moore ultimately conceded that the various requests for documents relating to Harry Thomason required production of the Watkins Memorandum.⁴⁸ Moore also admitted that from September 1993 through Spring 1994, he "was sending some warnings out to David Watkins" and "was worried that [the memorandum] would eventually become public after the Clintons left office, and that it would be embarrassing" because "the contents of the memo" regarding "the discussion of the role of the First Lady" were "different from the public record at that time."⁴⁹

Thus, although the Watkins Memorandum was clearly called for in Department of Justice requests by the Public Integrity Section going back to December 1993, the White House failed to produce it, ultimately resulting in the predicate for the initiation of this Office's investigation of David Watkins and Mrs. Clinton because of the memorandum's representations regarding Mrs. Clinton's involvement in the Travel Office firings. Although Moore ultimately acknowledged that the Watkins Memorandum was clearly responsive to Public Integrity's requests, he said he simply never put two and two together -- that he just was not thinking about the Watkins Memorandum when he learned of Public Integrity's request.⁵⁰

* * *

⁴⁸ Moore GJ 8/18/99 at 44-45.

⁴⁹ Moore GJ 2/17/99 at 60-61.

⁵⁰ Moore GJ 6/27/96 at 133-36; Moore House Depo. 3/26/95 at 141-42.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Division No. 94-1



APPENDIX OF COMMENTS OR FACTUAL
INFORMATION SUBMITTED UNDER
28 U.S.C. § 594(h)(2)

FINAL REPORT OF THE INDEPENDENT COUNSEL
(IN RE: MADISON GUARANTY SAVINGS &
LOAN ASSOCIATION)

IN RE: WILLIAM DAVID WATKINS

AND

IN RE: HILLARY RODHAM CLINTON

Robert W. Ray
Independent Counsel

October 12, 2000
Washington, D.C.

Hillary Rodham Clinton

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United States Court of Appeals
For the District of Columbia Circuit

FILED SEP 28 2000

September 28, 2000

Special Division

By Hand

UNDER SEAL

Hon. Mark J. Langer
Clerk of the Court
United States Court of Appeals, District of Columbia Circuit
United States Courthouse—Fifth Floor
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

In re: Final Report of the Independent Counsel
(In re: Madison Guaranty Savings & Loan Assn.)
In re: William David Watkins and
In re: Hillary Rodham Clinton (Div. No. 94-1)

Dear Mr. Langer:

Pursuant to 28 U.S.C. § 594(h)(2), please accept this correspondence filed on behalf of my client, Mrs. Hillary Rodham Clinton, a person mentioned in the Travel Office Final Report (In re: William David Watkins, and In re: Hillary Rodham Clinton) prepared by the Office of Independent Counsel ("OIC"). This letter constitutes written comments and factual information that Mrs. Clinton requests be included as an appendix to the Final Report.

Hon. Mark J. Langer

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The OIC's conclusion that no person committed any crimes¹ in connection with the May 19, 1993, firings of seven White House Travel Office political appointees or in connection with testimony about those events is entirely appropriate, however long in coming.² But the suggestion that Mrs. Clinton's testimony was "factually inaccurate" (Final Report at 234) as to her role in this matter is contradicted by the Final Report itself, which recognizes that she may not even have been aware of any influence she may have had on the firing decision. The OIC's choice of language is thus highly unfair and misleading. This is precisely the kind of unjustified and unfair commentary condemned by Senator Dole and other legislators when the Independent Counsel Act was reauthorized for five years in 1994.³

¹ The Final Report also makes the finding that "[t]he evidence is insufficient to prove a cover-up involving any violations of federal criminal law." (Final Report at 242).

² In his November 19, 1998, testimony before the House Judiciary Committee, then-Independent Counsel Kenneth Starr stated that he expected to announce his decisions on the Travel Office matter "soon." Hearing Before the Committee on the Judiciary Committee, at 38 (House of Representatives)(105th Cong. 2d Sess.)(Ser. No. 66)(Nov. 19, 1998).

³ Congress amended and substantially limited the final report provision of the Independent Counsel law in 1994, against a background of concern about the use that Iran-Contra Independent Counsel Walsh had made of his report powers. Senator Dole offered an amendment, ultimately accepted, which deleted the requirement that the Independent Counsel state "the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted." Senator Dole explained that his amendment eliminated:

"an open invitation to independent counsels to editorialize on cases that they, for whatever reason, chose not to bring, smearing hard-earned reputations in

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Fortunately, the evidence to refute the OIC's innuendo is present in the text of the Final Report itself, albeit often buried and deemphasized. The Final Report endorses as true facts and positions we have long advanced:

- There were no crimes committed either in the firing of Travel Office personnel or in later testimony about it;
- David Watkins, not Mrs. Clinton, made the decision to fire the Travel Office personnel;
- There was, at the time of the firings, abundant evidence of financial misconduct in the operation of the Travel Office;

the process. In the last administration, it was Republicans; in this administration it can be Democrats. I do not think it ought to happen to anybody, regardless of their party, if they have not committed some crime or if they are not indicted for some criminal activity."

Congressional Record, S15,972 (daily ed.)(Nov. 18, 1993). Senator Cohen expressed strong agreement, asserting that the final report of an independent counsel should be restricted to "the facts without engaging in either speculation or expressions of opinion as to the culpability of individuals unless that culpability or those activities rise to a level of an indictable offense, in which case the independent counsel would be duty bound to seek an indictment." Congressional Record, S15,886 (daily ed.)(Nov. 17, 1993). Senator Levin, sponsor of the bill, agreed to the amendment, stating that its purpose was "to try to avoid having an independent counsel state conclusory opinions that the subject of an investigation engaged in criminal wrongdoing in the absence of bringing an indictment against the person." *Ibid.* The amendment was accepted in the final version of the law, and the Conference Committee report declared:

"The power to damage reputations in the final report is significant, and the conferees want to make it clear that the final report requirement is not intended in any way to authorize independent counsels to make public findings or conclusions that violate normal standards of due process, privacy, or simple fairness."

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- Mrs. Clinton has always acknowledged her (entirely reasonable) concerns about reports of financial improprieties in the Travel Office in May, 1993;
- Mrs. Clinton did not knowingly intend to influence the Travel Office decision, and she was unaware that her expressions of concern might impel others to take action.

To start with the most obvious point, as the Final Report concedes, “[t]he decision to fire the Travel Office employees was a lawful one. The Travel Office employees served at the pleasure of President Bill Clinton, and they were subject to discharge without cause.” (Final Report at 240).

But, as again the Final Report recognizes, “[e]ven were cause a prerequisite for the employees’ discharge, there was, at the time the firings occurred, evidence of financial mismanagement in the Travel Office.” (*Ibid.*). Indeed, the Final Report documents the extraordinary fiscal improprieties which characterized Travel Office operations in May, 1993. While some of the rumors of misconduct in that Office did not ultimately prove to be well-founded, a national accounting firm, KPMG Peat Marwick, uncovered and documented numerous instances of serious financial misconduct, including missing and unaccounted for public funds.

In a report presented to David Watkins and others on Monday, May 17, 1993, on the basis of a three-day review, the outside auditors identified discrepancies in the amount of at least \$18,200 in missing checks and improperly recorded or unrecorded petty cash transactions. This report further found several significant accounting system weaknesses in the Travel Office, including “lack of financial control consciousness,” “no formal financial reporting process,” “no reconciliations of

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financial information other than reconciliations of bank statements,” “no documented system of checks and balances on transactions and accounting decisions within the office,” “no general ledger, or cash receipts/disbursements journals,” “lack of accounting expertise,” and “no evidence or documentation of competitive bids or purchase orders for press charter service.” The Final Report also acknowledges that the independent Peat Marwick investigation “revealed a major lack of organization, numerous inconsistent financial practices, and serious financial mismanagement in the Travel Office. Among the missing and crucial sources of information were ledgers, cash logs, and the like [E]vidence of financial irregularities was real.” (Final Report at 130).⁴ The record is also clear that the Travel Office employees were not fired until this evidence was unearthed and documented: “at the time of the decision to fire the Travel Office employees, Watkins had been made aware of evidence of financial mismanagement.” (Final

⁴ For example, the KPMG Peat Marwick auditors discovered that Mr. Dale kept a secret ledger for unexplained financial transactions, and they identified four checks totalling approximately \$14,000 that had been cashed but which had not been recorded in the general petty cash ledger given to them by Mr. Dale. (Final Report at 133). The auditors also found a check in the amount of \$5000 which was inconsistent with the entry in the general petty cash ledger which stated that \$2000 was recorded as the total amount received for the check. (*Id.* at 134). The auditors testified to the Independent Counsel that Mr. Dale “did not recall fully what the [missing] money was used for.” (*Ibid.*). At the end of their three-day review, the auditors concluded that the Travel Office records were in a “shambles” and that they had identified a minimum of \$18,000 of checks with no proper accounting. (*Id.* at 146).

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Report at 40). Indeed, as the Final Report also points out, the evidence of financial misconduct was sufficient to initiate a criminal investigation.⁵

In May, 1993, Mr. Watkins and other White House officials thus had properly come to regard the Travel Office as a serious problem, for which the Clinton Administration would be blamed, unless speedy and decisive action was taken. For those involved in the attempt to deal with the documented financial misconduct in the Travel Office, it was a bitter irony that action taken in good faith to avoid controversy instead plunged the Administration into a firestorm of unjustified criticism.

In any event, there is no basis whatsoever to conclude that Mrs. Clinton misrepresented her concerns or her tangential involvement in this matter. First, as the Final Report recognizes, the decision to fire the Travel Office employees was made by David Watkins, and David Watkins alone: Watkins "testified repeatedly and consistently that the ultimate decision to fire the employees was his alone—testimony that stands virtually uncontradicted at the conclusion of this investigation." (Final Report at 242). Moreover, "[n]o substantial evidence exists to establish that Mrs. Clinton had any direct responsibility (whether informal or

⁵ The Final Report notes that "based principally upon the Peat Marwick report, the Federal Bureau of Investigation had determined that sufficient evidence existed to provide the requisite predicate for the opening of a criminal investigation." (Final Report at 240). In 1994, Mr. Billy Dale was indicted by a federal grand jury and was charged with illegally converting to his own use approximately \$54,000 in Travel Office checks and \$14,000 in Travel Office cash. He was acquitted in 1995 after a jury trial.

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formal) for the actual decision to fire the Travel Office employees.” (Final Report at 16) (emphasis added).⁶

Second, Mrs. Clinton has always acknowledged she was concerned about financial mismanagement in the Travel Office when she learned of it in May, 1993. In her sworn testimony to the House Committee on Government Reform and Oversight, in March, 1996, Mrs. Clinton plainly stated that prior to the firings she had expressed her concern to Chief of Staff Thomas F. “Mack” McLarty and others “that if there were any problems in the Travel Office they should be addressed promptly. I would not have had enough information to know what steps, if any, should have been taken, but I believed then and still believe that if there were fiscal mismanagement in any part of the White House, it would be important to take prompt and appropriate corrective action.” Responses to Questions for the First Lady from the Committee on Government Reform and Oversight of the House of Representatives, at 10 (March 21, 1996)(emphasis in original). Mrs. Clinton also acknowledged in those responses that “[a]lthough I had no decision-making role with regard to the removal of the Travel Office employees on May 19, 1993, I expressed my concern [to several persons]. . . that if there were fiscal mismanagement in the Travel Office or in any part of the White House it should be

⁶ “Mr. Watkins had only one direct conversation with Mrs. Clinton, and neither his testimony nor that of Mrs. Clinton supports the allegation that she ordered or directed him to fire the Travel Office employees or that she pressured him to do so . . .” (Final Report at 17).

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addressed promptly.” (Id. at 12-13) (emphasis added). Her chief concern was “that this Administration . . . not be blamed for condoning any existing fiscal mismanagement problems, even though the Travel Office employees had been hired by previous administrations.” (Id. at 13). (See generally Final Report at 32-34 (quoting Mrs. Clinton’s Responses)). Thus, the Final Report acknowledges, as it must, that “Mrs. Clinton strongly expressed her concern for prompt and appropriate action to senior White House staff and advisors.” (Final Report at 16). Indeed, in light of the KPMG Peat Marwick findings, it would be surprising if Mrs. Clinton had not expressed concern at such a credible report of financial misconduct within the White House.

Finally, the Final Report’s innuendo that Mrs. Clinton’s testimony was “factually inaccurate” (Final Report at 234) in denying a role in the firings (as opposed to the Travel Office matter more generally) boils down to a semantic quibble. The Final Report notes that in her testimony to the Independent Counsel in July, 1995, she stated that she “believe[d]” she did not have “input with either Mr. McLarty or Mr. Watkins as to that decision” or a “role” in the decision to fire the Travel Office employees. (Final Report at 27-28). It further notes that in a submission on her behalf to the General Accounting Office in April, 1994, it was stated that she “had no role in the decision to terminate the employees” (id. at 30)

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(emphasis added).⁷ The Final Report concedes that “[t]aken individually, and viewed in isolation, Mrs. Clinton’s comments on the Travel Office might have had little influence.” (*Id.* at 241). But it asserts that because of her position as a “principal” within the Administration, and because others repeatedly invoked her name without her knowledge, other members of the White House staff felt “a significant pressure to act” on account of her. (*Ibid.*). On this basis alone, the Final Report suggests her testimony that she had no “role” in the firings was false.

This innuendo that Mrs. Clinton’s testimony was “factually inaccurate” is thus highly unfair, tendentious in the extreme, and simply doesn’t withstand analysis. The Final Report blandly ignores her sworn statement to Congress, quoted above, that she had no “decision-making role” in the firings (emphasis added) – a statement entirely consistent with her playing some other “role.” The Final Report, in other words, is critical of Mrs. Clinton simply for not realizing or appreciating the fact that her expressions of concern about financial misconduct in the White House might impel others to take actions which resulted in the Travel Office firings. If this conduct was, in fact, a “role” in the firings,⁸ there is no evidence she knew of or intended it. Indeed, the Final Report itself concedes that

⁷ An Associate White House Counsel testified that while Mrs. Clinton had “approved” the answers to the GAO questions he had drafted, “the answers submitted to the GAO on behalf of Mrs. Clinton were not verbatim recitations of his conversations with her.” (Final Report at 30 (footnote omitted)).

⁸ The Final Report notes that Mr. McLarty “resisted characterizing Mrs. Clinton’s involvement in the Travel Office as a ‘role’ or ‘input.’” (Final Report at 235).

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“[t]he evidence . . . is insufficient to show that Mrs. Clinton knowingly intended to influence the Travel Office decision or was aware that she had such influence at this early stage of the Administration.” (Final Report at 242) (emphasis added).⁹

Absent such knowledge, her testimony about her role was absolutely appropriate. Indeed, the Independent Counsel did not even probe or question Mrs. Clinton about the basis of her “belief” that she had no “role” or “input” in the firing decisions (significantly, only snippets of her July 22, 1995, interview by the Independent Counsel are quoted in the Final Report).

There is no evidence anywhere in the Final Report that contradicts Mrs. Clinton’s repeated descriptions of her involvement in the Travel Office firings: she had simply expressed concerns that, if financial mismanagement were found, it be dealt with speedily. We welcome the recognition, however belated, that neither she nor anyone else committed any crimes and that the OIC’s investigation is finally over.

The massive controversy over the May 19, 1993, firing of seven political appointees in the White House Travel Office was largely unjustified by substance, but the ensuing publicity and investigations took on a life of their own and have echoed through the President’s two terms in office. At the end of the day, these

⁹ Moreover, “[t]o a real degree, her interest in the matter was first generated by [Mr. Harry] Thomason’s intervention, and then overstated by him to others.” (Final Report at 243). The Final Report observes that “Mrs. Clinton’s subordinates and advisors invoked her name – in some cases, to serve their own interests” (Id. at 231).

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investigations have largely been a wasteful partisan extravagance.¹⁰ The evidence of Travel Office mismanagement fully justified Mrs. Clinton's concerns in May 1993. The part she played in this matter was very limited, as documented in the Final Report, and she at all times accurately described it. But in summarizing what she actually did, it is regrettable that the Final Report could not have been as fair as it is lengthy.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Kendall". The signature is fluid and cursive, with the first name "David" being the most prominent.

David E. Kendall

¹⁰ The Final Report is itself a monument of redundantly expensive investigatory overkill. The Travel Office firings were investigated by a White House internal review, by an FBI internal review, by the Office of Professional Responsibility, by the General Accounting Office, by the Treasury Department, by the Senate Banking Committee, and by the House Committee on Government Reform and Oversight. (Final Report at 209). The Independent Counsel's investigation replicated these earlier investigations, occupying the time of "more than ten attorneys, . . . several other career prosecutors, and senior OIC staff" (Final Report at 10), and numerous other "experienced criminal investigators and FBI agents" (*id.* at 11). By the Final Report's own account, testimony was elicited from 127 witnesses, 58,000 pages of documents were obtained, and 125 grand jury subpoenas for testimony were issued, along with another 89 grand jury subpoenas for documents. (Final Report at 11). The OIC nowhere divulges the cost of producing the Final Report. Seldom has so much money, time and effort been spent by so many, to investigate something so inconsequential.

Billy Ray Dale



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United States Court of Appeals
For the District of Columbia Circuit

FILED SEP 28 2000

Special Division

UNDER SEAL

September 27, 2000

The Honorable Mark J. Langer
Clerk, United States Court of Appeals for the
District of Columbia Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: Billy Ray Dale

Dear Mr. Langer:

Mr. Billy Ray Dale, by counsel and pursuant to 28 U.S.C. § 594(h)(2), respectfully submits the following comments and factual information regarding the Final Report of the Independent Counsel (In Re: Madison Guaranty Savings & Loan Association), In Re: William David Watkins and In Re: Hillary Rodham Clinton dated June 22, 2000 ("OIC Report").

In general, the report goes to great lengths to exonerate Mr. Watkins and Mrs. Clinton despite the overwhelming evidence of their wrongdoing, while failing to once and for all lay to rest the unfounded allegations against Mr. Dale despite the fact that the allegations were clearly false and fabricated by individuals who were actively seeking to have Mr. Dale removed so that they could take his job.

After almost 32 years of employment in the White House Travel Office working for seven presidents before Bill Clinton, and a total of 38 years of excellent service, Mr. Dale had received a number of awards from such organizations as the U.S. Secret Service and commercial airline companies. He also had numerous letters of commendation and appreciation from past White House staff and other government agency employees and business associates from around the world. The majority of these were left behind in The White House when he was illegally fired on May 19, 1993

Since Mr. Dale's trial and acquittal on trumped-up charges, he has been asked many times if he got any satisfaction out of the speedy verdict of acquittal. His answer has consistently been that, "My greatest satisfaction was the fact that after 30 months of investigation by the Justice Department and FBI, they could not find a single person not only nationwide but worldwide that I had associated with or conducted business with to come into court to testify against me."

The report does, at least, confirm to some extent Mr. Dale's reputation and stellar career. The report properly notes that there were idiosyncrasies in arranging travel for the presidential press corps that essentially precluded competitive bidding for these services. For instance, the press had to leave after the President but arrive before him so that at each end of the trip they would be on the ground to cover the arrival and departures. It also properly notes that the volatility of the actual air travel schedule made this business unattractive to most carriers. As to petty cash, the report notes that Mr. Dale was faced with a difficult accounting problem of always being ready to take care of the unanticipated expenses to keep the press happy and the President's trip on schedule while recording all of these miscellaneous expenditures. He then recorded these expenses and billed them to the various press agencies on a pro rata basis. Despite the high pressure, idiosyncrasies and lack of documentation from vendors (such as skycaps and drivers), Mr. Dale performed his job in a way that brought praises from The White House, the vendors the Travel Office did business with and, most importantly, the press corps. As noted in the report, Anne Edwards, the Special Assistant to the President, Director of Press Advance, "had known Dale for decades, and confirmed that he was well-respected and liked by the press." OIC Report at n.121.

Thus, the report confirms the undisputed fact that Mr. Dale's reputation was untarnished prior to the Clinton Administration arriving at the White House. That changed when baseless allegations were made by individuals whom the report notes were motivated solely by self interest and a desire to take over Mr. Dale's job.

As the report notes at pages 126 through 129, all of the allegations of wrongdoing originated with or came through Ms. Catherine Cornelius, who wanted to take Mr. Dale's job, or Harry Thomason and Darnel Martens, who wanted their company to take over the White House Travel Office operations so they could continue to receive the five percent commission they had been receiving from the Clinton-Gore Campaign. The report makes it clear that Ms. Cornelius was an inexperienced campaign worker who was not qualified to take over Mr. Dale's job. Further, the report notes that the five percent fee that Thomason and Martens' company was charging was highly irregular in the industry. More importantly, the report demonstrates that Thomason and Martens' company had not investigated the idiosyncracies of providing air transportation for the press corps of the President of the United States and, therefore, was not prepared to perform the services that the White House Travel Office had been performing.

This meant that these individuals had to come up with some other reason for removing Mr. Dale. The false allegations began when Martens responded to Mr. Dale declining his offer of help by sending a memorandum to Harry Thomason accusing Mr. Dale of failing to require Airline of the Americas to charge back costs to the press corps and by telling Mr. Thomason in person that Mr. Dale was accepting kickbacks. OIC report p. 66. As the report notes, these allegations were completely baseless and "erroneous." OIC report at p. 79. Based on Mr. Martens' actions, Mr. Thomason then spread these allegations throughout The White House. Based on Mr. Thomason's spreading of these false allegations, Mr. Watkins placed Ms. Cornelius in the Travel Office so that she could begin spying for him and copying records behind Mr. Dale's back. Based on her self-interest, the conclusions she arrived at from hearing the allegations that Mr. Thomason had spread, and her review of only part of the Travel Office records, she also began to make false accusations concerning Mr. Dale's handling of the petty cash in the Travel Office. It was these false allegations that in turn lead to the FBI investigation and criminal charges. Through this sad chain of events, false accusations were allowed to blemish an otherwise spotless career of dedicated service to the President. Fortunately in the end, Mr. Dale was acquitted, but the damage that was done cannot be repaired.

Not only did Ms Cornelius initiate many of the baseless accusations, she also made it impossible for Mr. Dale to refute the charges because she had stolen the records that he needed for his defense. In conducting her spying campaign, Ms. Cornelius was removing records from the Travel Office and taking them home. When she was confronted about this, she lied to Mr. Dale's assistant and denied having the records. As the report notes, she actually had records which she kept at the apartment she shared with Ms. Clarissa Cerda. OIC Report at p. 77. It is these "missing records" that lead to the trial of Mr. Dale.

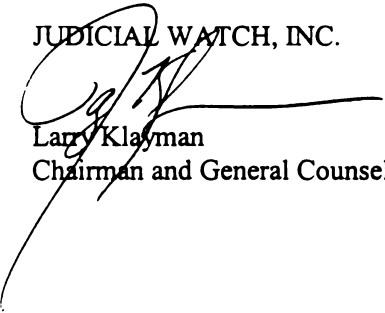
In short, it is unfortunate that this report which goes to such great lengths to exonerate Mr. Watkins and Mrs. Clinton, did not forthrightly set forth the facts concerning Mr. Dale's innocence. This is especially sad since the report notes that there was overwhelming evidence against Mr. Watkins and Mrs. Clinton and that they (and other senior staff in the White House) had been uncooperative in the investigation by withholding pertinent information and documents as well as asserting unfounded privileges. Compared to this, the report confirms Mr. Dale's stellar service record, confirms that the allegations against Mr. Dale were fabricated by people who wanted his job, confirms that he was acquitted after a trial that lasted several weeks, and that the "financial irregularities" of inadequate records for petty cash were the product of Ms. Cornelius' stealing Travel Office records rather than any wrongdoing on Mr. Dale's part.

In short, all of the evidence it sets out it proclaims that it "fully and completely discharges [Billy Ray Dale] from all criminal liability." The Office of Independent Counsel should have noted this as clearly and as often as it did for Mr. Watkins and Mrs. Clinton.

It is ironic and tragic, however, that while the Independent Counsel has stated that he needed proof beyond a reasonable doubt before indicting Mr. and Mrs. Clinton of various alleged crimes, that Mr. Dale, our client, was indicted by a corrupt Clinton-Gore Justice Department without any probative evidence of wrongdoing. It is regrettable that the Independent Counsel has failed to seek redress for this injustice, and as a result his report is suspect.

Respectfully Submitted,

JUDICIAL WATCH, INC.



Larry Klayman
Chairman and General Counsel

Brian Foucart

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

SEP 27 2000

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United States Court of Appeals
For the District of Columbia Circuit

September 27, 2000

FILED SEP 27 2000

Special Division

BY HAND DELIVERY

Robert Ray, Esq.
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-N
Washington, D.C. 20004

**Re: Final Report re *In re: Madison Guaranty Savings & Loan Association*
(*In re: William David Watkins and In re: Hillary Rodham Clinton*)**

Dear Mr. Ray:

I write on behalf of my client, Brian Foucart, in response to your report summarizing the Independent Counsel's investigation of the White House Travel Office matter.

At pages 130-131 of your report, there is discussion of a meeting attended by Vince Foster that purportedly occurred prior to May 14, 1993. The report states that Matt Moore testified that Peter Segal, Paul Toback and himself were present at the meeting, as well as possibly others. Among the "others" Mr. Moore reportedly testified might possibly have been in attendance was Mr. Foucart. As Mr. Foucart has previously testified, however, he never attended any meetings at which Mr. Foster was present.

At page 134 of the report there is a description of events surrounding a Peat Marwick review of a specific petty cash disbursement by the Travel Office. A footnote to this section (footnote 585) states that Mr. Herman occasionally reported findings regarding cash transactions to Ms. Thomasson, Ms. O'Connor and/or Mr. Foucart. While Mr. Foucart was aware that there were issues regarding the handling of the petty cash fund, and while Mr. Herman did occasionally report his activities to Mr. Foucart, this specific petty cash disbursement was never brought to Mr. Foucart's attention.

Robert Ray, Esq.
September 27, 2000
Page 2

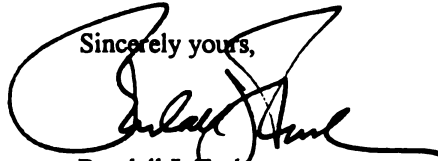
At page 171 of the report there is discussion of a meeting that Mr. Foucart purportedly may have attended. Mr. Foucart has no recollection of having attended this meeting.

At page 178 of the report there is discussion of Ms. Cerda's recollection of events surrounding Mr. Dale's possession of Ms. Cornelius' memo of February 15, 1993 regarding the Travel Office. A footnote to this section (footnote 774) contains a lengthy description by Ms. Cerda of a conversation between Mr. Dale and Mr. Foucart, to which Ms. Cerda was not a party, in which Mr. Dale supposedly threatened Mr. Foucart and/or the White House. Mr. Foucart has repeatedly testified that although Mr. Dale showed him the memo, they did not discuss it in any detail and Mr. Dale did not threaten anyone.

At page 182 of the report (and again in footnote 802), there is discussion of testimony that Mr. Foucart supposedly urged Ms. Cornelius to resign. He did not. While Mr. Foucart called Ms. Cornelius at Mr. Watkins' request, he merely pointed out that she could avoid continuing to be in the public spotlight by taking an available job at the DNC for which she was well qualified.

At page 184 of the report, there is additional discussion of conversations between various persons, including Ms. Cerda and Mr. Sloan, regarding Ms. Cornelius' continued employment at the White House. Mr. Foucart had no knowledge of any of those conversations at the time, nor does he have any knowledge of them now.

Sincerely yours,



Randall J. Furk

RJT/dlg

Ed Hamblin

July 5, 2000

United States Courthouse
Chief Deputy Clerk Marilyn R. Sargent
Room # 5409
3rd and Constitution Avenue, N.W.
Washington, DC 20001

United States Court of Appeals
For the District of Columbia Circuit

FILED JUL 10 2000

Special Division

RE: Request to Delete My Name

Chief Deputy Clerk Marilyn Sargent,

As I discussed with you on the phone today, I feel that my rights to privacy has been violated by the mention of my name in any report to do with Madison Guaranty Savings and Loan Association, William David Watkins or Hillary Rodham Clinton.

On this day after we celebrate our freedom in this country, I find that I am about to be violated without any rights as an American citizen. I find out that without making a trip to Washington, DC, AT MY EXPENSE to see what someone has written in a legal document about me, I have no rights to a copy or to even be told what is being written about ME! At what point does the independent counsel defend my rights as an American citizen? At what expense does the independent counsel invade my privacy? Who defends me? What legal action can I take to defend my rights? Who do I address the legal action to?

I HAVE NOT MET, TALKED OR BEEN ASSOCIATED WITH ANY OF THESE INDIVIDUALS OR BUSINESSES MENTIONED ON THE SEALED ORDER, THEREFORE, I MUST INSIST THAT MY NAME AND ANY COMMENTS BE COMPLETELY REMOVED FROM THE REPORT MENTIONED IN THE DOCUMENT YOU SENT TO ME! I WOULD ALSO LIKE TO HAVE WRITTEN CONFIRMATION OF THIS REMOVAL.

Any mention of my name in any report associated with the above mentioned individuals could be damaging to my good reputation. I should not be referenced or quoted in any way!

Would you see that this written request gets to the appropriate person in authority to have my name removed from the report before it is published and my good name and reputation are damaged by any association with these individuals!

Please make all responses to my request in writing to my home address below, please include the names, addresses, phone and fax numbers of the persons involved in this legal matter.

Sincerely,



Ed Hamblia,
121 Berrywood Drive
Smyrna TN, 37167
(615) 355-1840 Home Phone
(615) 223-7801 Work Phone

Thomas F. McLarty, III

ZUCKERMAN, SPAEDER, GOLDSTEIN, TAYLOR & KOLKER, LLP.

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BALTIMORE, MD

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September 28, 2000

United States Court of Appeals
For the District of Columbia Circuit

FILED SEP 28 2000

Mark J. Langer, Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Special Division

UNDER SEAL

Re: Thomas F. McLarty, III

Dear Mr. Langer:

As counsel to Mr. McLarty and on his behalf we submit this response to the Report filed by the Office of Independent Counsel in *In re: Madison Guaranty Savings & Loan Association (In re: William David Watkins and In re: Hillary Rodham Clinton)*. We make this submission pursuant to 28 U.S.C. § 594(h)(2) and request that it be included in the appendix to the Report.

The Independent Counsel concludes in the Report that no prosecutions are warranted. In reaching that conclusion, the Independent Counsel relies in part upon Mr. McLarty's testimony. Despite crediting Mr. McLarty's testimony in the text of the Report, the Independent Counsel in Appendix A purports to describe White House "resistance" to providing information to investigators. It claims Mr. McLarty had "varying recollections" regarding a brief contact he had with the First Lady on May 16, 1993 as an example of this purported resistance. That characterization is unfair and unjustified by the facts.

First and foremost, Mr. McLarty has never resisted providing information to anyone investigating the travel office matter. To the contrary, Mr. McLarty has cooperated fully with every investigative team concerned with the matter. They included the White House management review in 1993, the General Accounting Office, the House Government Reform Committee and the Office of Independent Counsel. Mr. McLarty has made himself available for questioning on numerous occasions and has produced documents.

Second, Mr. McLarty did not have varying recollections regarding the substance of his contact with the First Lady on May 16, 1993. It is true that the agent's notes of his March 1994 GAO interview do not contain a reference to the May 16th conversation. It is manifestly unfair to suggest, however, that he intended to conceal that conversation when he spoke to the GAO. As the Independent Counsel knew, Mr. McLarty had publicly referred to the "second" contact with the First

Mark J. Langer, Clerk
September 28, 2000
Page 2


Lady when he met with the press on July 2 1993 to present the findings of the management review. Congressman William F. Clinger (R-Pa.), who in 1996 chaired the House Government Reform Committee's investigation of the travel office matter, in October 1994 acknowledged that Mr. McLarty had disclosed the second contact with the First Lady. In his October 7, 1994 Letter to Honorable John Conyers, Attachment K, p.4, he says:

According to the GAO interview with Mr. McLarty, at least two additional discussions between Mrs. Clinton and White House staff regarding the Travel Office may have occurred. Mr. McLarty recalls Mrs. Clinton stating that she'd already spoken with David Watkins prior to the Clinton-McLarty May 13th conversation. In addition, Mr. McLarty told the media on July 2, 1993 that the First Lady may have spoken to him again about the Travel Office after the Peat Marwick review. If McLarty is correct, this conversation could have occurred before the firings, since Peat Marwick's draft report was submitted on May 17, 1993.

In 1996, Mr. McLarty testified that he simply did not remember whether, when he spoke in 1993 to Mr. Podesta about the travel office matter, they specifically discussed the May 16th conversation. That is hardly surprising given the passage of time. Simply put, there is nothing in these events to justify an innuendo that Mr. McLarty was other than completely forthcoming and truthful at all times.

The OIC Report contains two additional errors regarding Mr. McLarty's May 16 contact. One page 150, the Report states that Mr. McLarty had his second telephone contact with the First Lady on May 16, 1993. In fact, this contact was in person. Mr. McLarty has never testified that it was on the telephone. This same error appears again on page 233.

Very truly yours,



William W. Taylor, III
Leslie Berger Kiernan
Counsel to Thomas F. McLarty, III

Matthew Lee Moore

UNDER SEAL

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the District of Columbia Circuit

DIVISION FOR THE PURPOSE OF
APPOINTING INDEPENDENT COUNSELS

FILED SEP 28 2000

Special Division

ETHICS IN GOVERNMENT ACT OF 1978, AS AMENDED

In re Madison Guaranty Savings :
& Loan Association :
(In re: William David Watkins and : Division No. 94-1
In re: Hillary Rodham Clinton) :

**COMMENTS OF MATTHEW LEE MOORE ON THE
INDEPENDENT COUNSEL'S FINAL REPORT**

The following comments are submitted on behalf of Matthew Lee Moore in response to the Independent Counsel's Final Report ("Report") on the firings of employees of the White House Travel Office. These comments are limited to a single, narrow issue: the Report's unfair implication that Moore, a lawyer, acted improperly by identifying but not immediately producing potentially privileged documents in his possession in response to subpoenas from the House Committee on Government Reform and Oversight ("House Committee") and the Office of the Independent Counsel ("OIC") in 1996.

Moore's decision to withhold the documents arose from a claim of attorney-client privilege raised by David Watkins, who asserted that the documents reflected confidences revealed to Moore as part of an attorney-client relationship. Moore informed the House Committee and the OIC that he could not ethically produce the documents until Watkins relinquished his privilege claim or a tribunal of appropriate jurisdiction rendered a final decision on the validity of that claim.

As set forth below, Leonard H. Becker, former Counsel to the District of Columbia Bar, has reviewed Moore's actions and concluded that by declining to unilaterally produce the documents in the face of Watkins' privilege claim, "Mr. Moore did everything that a lawyer lawfully and ethically should do." Affidavit of Leonard H. Becker, ¶23 (Exhibit A hereto). In light of this fact, the current Report's implicit criticism of Moore's response to the 1996 subpoena should be deleted or altered to reflect that he fulfilled applicable ethical standards.

Background

The current OIC Report addresses actions relating to the firing of the staff of the White House Travel Office in May 1993, and subsequent White House responses to inquiries about the firings. At the time, Moore was a 25-year old junior staffer in the White House Office of Management and Administration.¹ He had graduated from the University of Michigan Law School in 1992, and began work at the Office of Management and Administration in March 1993. Moore himself had no involvement in, or material first-hand knowledge of, the firings. He left the White House in 1994, almost two years before the OIC's investigation of the Travel Office firings began.

Moore's involvement in the current investigation stems from assistance he provided his superior, David Watkins, months after the firings. Specifically, Watkins asked Moore in September 1993 to assist him in drafting a memorandum that provided Watkins' historical perspective on the firings. That memorandum, now known as the "Watkins Memorandum,"

¹ Moore's title when he left the White House in 1994 was "special counsel" within the Office of Management and Administration. As such, he was not part of the White House Counsel's Office. He instead reported to the Assistant to the President for Management and Administration, David Watkins.

triggered the OIC's review of the Travel Office firings. Moore's knowledge of the firings derives almost totally from the hearsay provided him by Watkins while assisting in preparation of the Watkins Memorandum.²

Moore believed that he had provided Watkins with all materials (including Moore's handwritten notes) in his possession relating to the Watkins Memorandum prior to leaving the White House in June 1994. After receiving subpoenas from Congress and the OIC in 1996, however, Moore determined that he still had in his possession several early drafts of the Watkins Memorandum that had been saved (in electronic format) on the hard drive of his home computer in 1993.

Moore retained the firm of Steptoe & Johnson, LLP (his current counsel) to advise him regarding his obligations in responding to the Congressional subpoena. Watkins, who in 1996 also received subpoenas that sought his memorandum, informed Moore through counsel that he considered his communications with Moore in 1993-94 to be privileged, and directed that Moore not produce documents reflecting those communications. Watkins specifically requested that drafts of the Watkins Memorandum not be produced.

Acting on the advice of his own counsel, Moore informed both the House Committee and the OIC that he had in his possession drafts of the Watkins Memorandum, but that he believed under applicable ethical guidelines he could not produce the documents pending resolution of Watkins' claim of privilege. When asked for his personal opinion whether Watkins' claim of privilege would be upheld, Moore consistently stated that he questioned whether Watkins and he

² In addition, Moore obtained other after-the-fact knowledge of the firings as a result of assisting with the White House's production of documents to the General Accounting Office and other bodies that reviewed the firings.

had a personal attorney-client relationship, as Watkins had asserted. Moore also consistently testified, however, that he believed that Watkins' claim was sufficiently supportable as to preclude Moore from unilaterally producing the documents prior to review of Watkins' claim by an appropriate judicial body. This position was consistent with applicable District of Columbia ethics opinions, which Moore cited at the time, and the advice of Moore's own counsel. See Letter from William T. Hassler, Moore's counsel, to Hon. William F. Clinger, Jr., Chairman of the House Committee on Government Reform and Oversight, of 5/8/96 (Exhibit B hereto).

Watkins' privilege claim was never adjudicated. Instead, Watkins ultimately agreed to produce the copies of the memorandum in his possession to the OIC under a non-waiver agreement. Following Watkins' production of the memorandum to the OIC, Watkins informed Moore that he had no objection to Moore's providing testimony to the OIC about conversations between Moore and Watkins. Moore subsequently testified repeatedly before the grand jury about the drafting of the memorandum.³

Discussion

A passage in Appendix D to the Report now before this Court implies that Moore acted inappropriately by initially withholding production of drafts of the Watkins Memorandum that were still in Moore's control when he received subpoenas from the House Committee and the

³ After Watkins' production to the OIC, copies of the draft memoranda in Moore's possession were provided to the House Committee. The Committee had initiated contempt proceedings in 1996 against Watkins, Moore, and more senior members of the Clinton Administration, including former White House Counsel John Quinn, in a vote that split along partisan lines. See H.R. Rep. No. 104-598, 104th Cong. 2d Sess. (May 29, 1996). The Democratic minority on the Committee opposed any contempt proceeding against Moore in light of Moore's need to comply with applicable ethical canons. Id. at 100-101. Following production of the drafts in Moore's possession, any question of further proceedings against Moore by the House Committee became moot.

OIC. The relevant passage states that after receiving subpoenas from the OIC and the House Committee,

Watkins and Moore, through counsel, asserted attorney-client privilege. Moore subsequently testified that during the memorandum's preparation he did not have an attorney-client relationship with Watkins. In Moore's view, and despite his admission that he knew that no attorney-client privilege applied, Congress was wrong to hold him and the others in contempt because Congress bore the burden of "trying to resolve the attorney-client privilege."

OIC Travel Office Report, Appendix D at iii (citations omitted).

The quoted passage contains misstatements of both fact and law. First, Moore himself did not assert a claim of attorney-client (or any other) privilege with respect to his communications with Watkins. Instead, Moore repeatedly informed both the House Committee and the OIC that he took no position with respect to Watkins' claim, but could not ethically disregard that claim and produce the documents unilaterally. See Ex. B (Letter from William T. Hassler to Hon. William F. Clinger, Jr., of 5/8/96). The OIC's Report misleadingly glosses over this important distinction. Second, the House of Representatives never held Moore or others "in contempt." Although the House Committee initiated contempt proceedings, further proceedings regarding Moore were mooted after Watkins' production of the documents to the OIC. The House itself never took action on the Committee charges.

More fundamentally, the quoted passage completely misconstrues the ethical standards governing Moore's actions. Moore's personal opinion regarding the validity of Watkins' claim is irrelevant under applicable standards. The Report's suggestion that Moore should have immediately turned over the documents to the House Committee and the OIC based on his personal evaluation of the claim is contrary to the Rules of Professional Conduct governing lawyers.

The D.C. Bar Legal Ethics Committee, for example, has explicitly held that where a colorable claim of privilege has been asserted, the Rules of Professional Responsibility require an attorney to assert a claim of confidentiality pending adjudication of the claim even where the existence of the attorney/client relationship is in question:

Obviously, the potential for unethical conduct – and the risk to be protected against – is that of disclosing confidences or secrets of one who is ultimately found to be a client or former client. Thus, if there is a colorable basis for asserting that the statements were made in the course of an attorney/client relationship, the lawyer must resolve the question in favor of preserving the confidentiality of the disclosures. This colorable basis standard obtains even when...the lawyer's personal view is that the attorney/client relationship never existed or was terminated prior to the disclosure at issue.

D.C. Bar Opin. No. 99 (Jan. 28, 1981) (Exhibit C hereto) (emphasis added).

The Bar Committee in the same matter went on to state:

the supposed client's statements may be disclosed only with his consent after full discussion or as required by law or court order. Thus, assuming [the client] in the present inquiry does not consent to disclosure of his statements, [the attorney's] obligation is to assert before the grand jury the confidentiality of those statements....The ethical obligation of the [attorney] is simply not to compromise his client's position voluntarily, and that obligation continues until the relevant forum has resolved in the negative the question of the existence of the attorney/client relationship.

Id. (emphasis added). See also D.C. Bar Opin. No. 14 (Jan. 26, 1976) (Exhibit D hereto).

Under this standard, Moore had no choice but to withhold the relevant documents from the House Committee and the OIC pending an opportunity for Watkins to obtain judicial review of his privilege claim. For Moore to do otherwise would have been potentially unethical and could have subjected him to disciplinary sanctions.

The propriety of Moore's 1996 response to the OIC and House subpoenas is further supported by a leading expert on ethical standards in this jurisdiction. Exhibit A hereto contains the opinion of Leonard H. Becker, former District of Columbia Bar Counsel, regarding Moore's

conduct. Mr. Becker is a respected attorney whose accomplishments include seven years of service as D.C. Bar Counsel, where he was responsible for investigating and, where appropriate, prosecuting alleged violations of the D.C. Rules of Ethics. In his affidavit, Mr. Becker presents an exhaustive analysis of the factual and legal background of the issue and concludes that Moore's actions in withholding the documents were beyond reproach under the ethical standards applicable to his circumstances. See Ex. A (Becker Aff. ¶¶ 15-23). Moore properly respected Watkins invocation of the attorney-client privilege at the outset; produced immediately all responsive documents in his possession not subject to a claim of privilege; and then later testified at length about the documents originally withheld after their production to the grand jury by Watkins.

Although a minor matter in the context of the overall OIC investigation, the issue now raised is important to Moore, who respectfully requests that the above-quoted passage on page iii of Appendix D of the Report be deleted⁴ or amended to remove any negative connotation.⁵ As the Becker Affidavit concludes, "Mr. Moore acted correctly and in accordance with his ethical

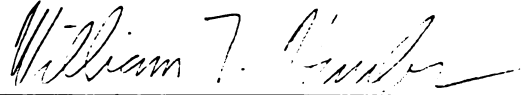
⁴ Deletion of the cited passage is particularly appropriate given that the statement in question is found not in the main body of the OIC report, but in an attached Appendix, and that the subject of the passage is largely ancillary to the initial focus of the OIC investigation – that is, the substance of the Watkins Memorandum, and whether the Memorandum should have been produced in 1993-94.

⁵ A fairer and more accurate version of the passage would read as follows:

Watkins, through counsel, asserted attorney-client privilege. In light of Watkins' assertion, Moore also withheld drafts of the memorandum that were still in his possession. Moore subsequently testified that while he had significant reservations about whether a personal attorney-client relationship had ever existed between himself and Watkins, he was ethically bound to honor Watkins' privilege assertion until either Watkins withdrew the privilege claim or a tribunal of appropriate jurisdiction ordered him to turn over the documents.

obligations as an attorney.” Aff., ¶23. The OIC Report should not be allowed to obscure this fact based on a misleading construction of applicable standards that, disturbingly, fails to acknowledge that Moore’s conduct was dictated by his ethical obligations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William T. Hassler", written over a horizontal line.

William T. Hassler
Timothy K. Howard
Stephoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

Attorneys for Matthew Lee Moore

Exhibit A

UNDER SEAL

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DIVISION FOR THE PURPOSE OF
APPOINTING INDEPENDENT COUNSELS

ETHICS IN GOVERNMENT ACT OF 1978, AS AMENDED

In re Madison Guaranty Savings	:	
& Loan Association	:	
(In re: William David Watkins and	:	Division No. 94-1
In re: Hillary Rodham Clinton)	:	

WASHINGTON)

DISTRICT OF COLUMBIA)

AFFIDAVIT

LEONARD H. BECKER, being duly sworn, deposes and states:

1. I make this affidavit in support of the application of Matthew Moore, Esquire, to amend portions of the report of the Office of Independent Counsel (the "OIC"), following its investigation pursuant to this Court's order dated March 22, 1996, pertaining to the dismissals of personnel in the White House Travel Office (the "OIC Travel Office Report"). In specific, I address the circumstances pertaining to Mr. Moore's receipt of confidences of Mr. David Watkins in 1993 concerning the dismissals and Mr. Moore's subsequent response to subpoenas issued by the OIC and a Congressional Committee calling for the production of documents that memorialized those confidences.

Statement of Qualifications

2. I am a member in good standing of the District of Columbia Bar and a partner in the law firm Arnold & Porter in its Washington, D.C. office. I have been a partner in the firm from 1977 through 1991 and again from September 1999 to the present. From 1992 to September 1999, I served as District of Columbia Bar Counsel. In that capacity, I became familiar with the District of Columbia Rules of Professional Conduct (the "Rules"), promulgated by the District of Columbia Court of Appeals, the antecedent District of Columbia Code of Professional Responsibility (the "Code"), likewise promulgated by the District of Columbia Court of Appeals, and the Model Rules and Model Code, promulgated by the American Bar Association.

Statement of Facts

3. My understanding of the facts pertinent to the opinions expressed herein is based upon my review of the following materials: H.R. Rep. No. 104-598, 104th Cong. 2d Sess., entitled "Proceedings Against John M. Quinn, David Watkins, and Matthew Moore (Pursuant to Title 2, United States Code, Sections 192 and 194)" (May 29, 1996); a transcript of Mr. Moore's testimony before the House Committee on Government Reform and Oversight (the "House Committee"); excerpts from the OIC Travel Office Report and supporting materials (made available for review under seal); correspondence between counsel for Mr. Watkins on the one hand and the OIC and the House Committee on the other; a letter dated February 23, 1996 from Steptoe & Johnson, Mr. Moore's legal counsel, to Mr. Moore; a letter dated February 26, 1996 from Steptoe & Johnson to the Chair of the House Committee; and conversations with Steptoe & Johnson concerning Mr. Moore's background and employment history.

4. I am advised that Mr. Moore graduated from Michigan Law School in 1992 and was admitted to the Bar of the State of Arkansas in the same year. Currently he is employed as an associate with the New York firm Davis Polk & Wardwell. Previously he served as a law clerk to the Hon. Deborah A. Batts, United States District Judge in the United States District Court for the Southern District of New York. In 1996, he was admitted to practice before the Appellate Division of the Supreme Court of New York for the First Department.

5. In March 1993, Mr. Moore was hired as special hearings counsel to the White House Office of Management and Administration (the "Office"). He reported to Mr. Watkins, head of the Office. Subsequently the title of Mr. Moore's position changed to special counsel. In his position, he periodically performed functions as an attorney, for example, acting occasionally as the Office's liaison in consulting on legal matters with the Office of White House Counsel.

6. In September 1993, Mr. Watkins asked Mr. Moore to record Mr. Watkins' confidences concerning his dismissal of personnel in the White House Travel Office. At the outset of the conversation, Mr. Watkins made a point of confirming that Mr. Moore was a lawyer admitted to the Bar. Mr. Moore took handwritten notes in a series of meetings with Mr. Watkins, prepared drafts of a memorandum on the basis of the meetings, reviewed the drafts with Mr. Watkins, and revised them in accordance with Mr. Watkins' instructions. Mr. Watkins requested that the documents be marked as privileged and confidential. See OIC Travel Office Report, App. D, at ix, note 43. Mr. Moore followed this instruction, contemporaneously labeling the drafts "PRIVILEGED AND CONFIDENTIAL" at Mr. Watkins' request and according the drafts the level of

confidentiality that he believed was protected by the attorney-client privilege. See H.R. Rep. No. 104-598, supra, at 50. One early draft of the memorandum was addressed to the White House Chief of Staff; later drafts, to Mr. Watkins' retained legal counsel. Although Mr. Moore did not regard himself as having formed a personal attorney-client relationship with Mr. Watkins, he recognized that Mr. Watkins had reposed his trust and confidence in him on the basis of his status as a lawyer.¹

7. During the period described above, Mr. Watkins retained counsel at the Washington, D.C. law firm Hogan & Hartson. See H.R. Rep. No. 104-598, supra, at 50.

8. In June 1994, Mr. Moore left his position at the White House. Prior to his departure, he turned over to Mr. Watkins his handwritten notes of his meetings with Mr. Watkins and copies of certain versions of the draft memorandum that he had retained in his possession.

9. In February 1996, Mr. Moore received a subpoena from the House Committee calling upon him to produce various materials. Thereafter, commencing in April 1996, he received a series of subpoenas from the OIC, likewise calling upon him to produce certain materials. Upon review of materials in his possession, he found draft versions of the Watkins memorandum in electronic form, stored on the hard drive of his personal computer. He retained legal counsel to advise him with respect to his proper

¹ A third person was present during one of Mr. Moore's initial discussions with Mr. Watkins. Mr. Moore testified before the House Committee that he discussed with that person whether it was advisable to prepare the memorandum in accordance with Mr. Watkins' wishes. Mr. Moore could not recall whether he had shared a draft of the memorandum with the person. H.R. Rep. No. 104-598, supra, at 42. There is no indication in the materials made available to me for my review that that person or any other was present in subsequent conversations, that Mr. Moore made drafts available to any third person, or that he knew they had been made available.

response to the subpoenas. Counsel ascertained that Mr. Watkins, through his counsel, wanted Mr. Moore to assert an attorney-client privilege with respect to the responsive documents in his possession that recorded Mr. Watkins' confidences. Mr. Moore's legal counsel advised Mr. Moore that he should not produce the documents in question, but instead should inform the subpoenaing body of the existence of the documents and of the basis for declining to produce them pending a determination of the validity of Mr. Watkins' claim of privilege.

10. Mr. Moore acted in accordance with the advice of his counsel and the instructions of Mr. Watkins until Mr. Watkins independently produced the drafts in question to the OIC. In the interim, Mr. Moore through counsel produced, either directly to the House Committee or through the White House in accordance with previously agreed procedures, other responsive documents not subject to Mr. Watkins' claim of privilege. Subsequently, Mr. Moore testified before the grand jury as to all aspects of his communications with Mr. Watkins concerning the memorandum.

Statement of Opinion

11. The attorney's obligation to preserve the confidences and secrets of the client stands at the center of the attorney's ethical duties under the fiduciary laws and disciplinary rules governing attorney-client relations. Rule 1.6(a) of the Arkansas Rules of Professional Conduct, where Mr. Moore first was admitted to practice, provided at the time of his admission in 1992 and continues to provide: "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation," with further exceptions not relevant in this matter.

12. The rules of other jurisdictions are to the same effect, either in the same wording or in substance. See, e.g., D.C. Rule Prof. Cond. 1.6(a) (modifying Model Rule in certain respects); 22 N.Y.C.R.R. § 1200.19 (following Model Code, Discip. R. 4-101).

13. Even where the attorney doubts that he has formed an attorney-client relationship, he remains obligated to preserve the putative client's confidences and secrets so long as the client has a basis to believe that his communications with the attorney are shielded by the privilege and has relied upon that belief in communicating confidences and secrets to the lawyer or in entrusting the lawyer with responsibility to protect the client's interests. See, e.g., D.C. Bar Legal Ethics Op. No. 99 (Jan. 28, 1981) (construing antecedent Code provision and concluding that "if there is a colorable basis for asserting that the statements were made in the course of an attorney/client relationship, the lawyer must resolve the question in favor of the existence of that relationship and in favor of preserving the confidentiality of the disclosures") (emphasis added); cf. ABA Comm. on Ethics and Prof. Resp., Formal Op. No. 90-358, at *2 (holding that rule imposing ethical obligation to preserve client confidences and secrets derived during exploration of possible attorney-client relationship attaches even where no legal services performed and attorney ultimately declines representation).

14. Particularly where, as here, the putative client directs the attorney not to divulge the client's confidences, the attorney should protect the putative client's position until the client releases the attorney from the obligation or a tribunal of competent authority determines that the attorney should make disclosure. Legal Ethics Op. No. 99, supra. As noted in the "Scope" section of the Arkansas Rules:

“[T]here are some duties, such as that of confidentiality under Rule 1.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.”

Cf. In re Lieber, 442 A.2d 153, 156 (D.C. 1982) (“client’s perception of an attorney as his counsel is a consideration in determining whether a relationship exists”) (citations omitted); In re Bernstein, 707 A.2d 371, 375 (D.C. 1998).

15. A review of the relevant events in 1993 should proceed in the context of the question currently presented – whether Mr. Moore acted appropriately in 1996 when he acceded to Mr. Watkins’ request that Mr. Moore not unilaterally abrogate Mr. Watkins’ claim of privilege by producing drafts of the Watkins memorandum to the subpoenaing bodies. That question in turn involves consideration whether Mr. Moore, in appraising his responsibilities in response to the subpoenas addressed to him and in relying upon the advice of counsel, could conclude fairly that events in 1993 had given rise to a reasonable basis for the assertion of the privilege.

16. Upon consideration of the facts set forth above, I conclude that Mr. Moore properly came to such a conclusion in 1996. In so concluding, I do not reach the question whether Messrs. Watkins and Moore entered into an attorney-client relationship in 1993.

17. Mr. Watkins entrusted Mr. Moore, an attorney, with his confidences and secrets. Mr. Moore’s subsequent actions, in meeting with Mr. Watkins, taking handwritten notes, preparing drafts of a memorandum, reviewing the drafts with Mr. Watkins and making changes at Mr. Watkins’ direction, constituted a core legal activity – one that lawyers regularly perform in connection with the representation of clients and

to which the presumption of the protection of the attorney-client privilege routinely attaches. The fact that Mr. Watkins contemporaneously asked Mr. Moore to treat the resultant drafts as privileged, and that Mr. Moore labeled them “privileged and confidential,” reflects that both participants regarded the relationship and the subject-matter as confidential. Given that contemporaneous understanding, Mr. Moore properly could conclude that a court might find that Mr. Watkins’ subsequent request to protect that confidentiality was based on Mr. Watkins’ historic expectation rather merely than a late-arriving apprehension generated by legal developments before the OIC.

18. The fact that Mr. Watkins contemporaneously retained private counsel at a Washington, D.C. law firm is not dispositive of the question whether Mr. Watkins reasonably believed that Mr. Moore was acting on his behalf as a lawyer and in a confidential capacity. It is not uncommon for a client to retain two or more counsel in connection with a given legal matter, and it is not unethical for a lawyer to accept a legal representation in such circumstances. Nor do those circumstances, without more, give rise to a question concerning the bona fides of the attorney-client relationship on the part of any of the lawyers so retained.

19. Likewise, the fact that Mr. Watkins set forth in the memorandum his recollections of events pertinent to the dismissal of Travel Office employees, and thus generated a fact-bound memorandum rather than a legal brief or analysis, does not deprive Mr. Watkins’ communication of the benefits of a privilege that otherwise would attach. The client typically communicates to the lawyer the facts known to the client and looks to the lawyer to supply legal advice based upon the information so imparted. Mr. Moore’s labeling the drafts as privileged and confidential, in the course of his

preparing them, underscores his contemporaneous understanding that he was acting in a confidential capacity when he produced the successive drafts at Mr. Watkins' request.

20. Mr. Watkins' early designation of the White House Chief of Staff as the addressee of the memorandum arguably might suggest a lack of intent to subject the substance of his disclosures to the attorney-client privilege. However, that suggestion is counterbalanced, if not negated, by Mr. Watkins' contemporaneous request to Mr. Moore to label the drafts "privileged and confidential" and is equally susceptible of the explanation that Mr. Watkins did not appreciate that disclosure of the memorandum to a third party could compromise the privilege. In any event, Mr. Watkins ultimately substituted his privately retained counsel as the addressee in later versions of the memorandum, thereby rendering the earlier address academic. Mr. Moore cannot be faulted for having concluded, upon the advice of counsel, that he should respect Mr. Watkins' assertion of the privilege in 1996 notwithstanding the initial designation of the Chief of Staff as the recipient of the memorandum.

21. Mr. Moore's actions on behalf of Mr. Watkins in 1996 are not subject to criticism on the theory that Mr. Watkins did not pay Mr. Moore for his services rendered in 1993. The lawyer's duty to protect the client's confidences attaches without regard to whether the lawyer receives monetary compensation for his services.

22. Finally, the fact that Mr. Moore may have discussed issues relating to the memorandum with a third party, whether within or without Mr. Watkins' presence, did not provide a basis upon which Mr. Moore unilaterally could conclude in 1996 that Mr. Watkins had waived the privilege attendant upon the creation of the memorandum itself or its various drafts. Specifically, Mr. Moore's discussion with a third party whether it

was prudent for Mr. Watkins to prepare such a memorandum did not necessarily entail divulgence of the substance of Mr. Watkins' confidences, imparted to Mr. Moore, addressing the points to be made in the memorandum. Likewise, even if Mr. Moore knew contemporaneously with the event that Mr. Watkins had transmitted copies of certain drafts to a third party, that knowledge, without more, would not provide a basis to Mr. Moore in 1996, unilaterally and over Mr. Watkins' objection, to assume that the other drafts remaining in Mr. Moore's possession had ceased to enjoy the privilege and thus should be surrendered without objection to whichever investigative body might demand them. Nothing in the materials made available to me reflects that Mr. Moore was contemporaneously aware that any third person had reviewed or edited drafts of the memorandum.

23. In 1996, Mr. Moore acted correctly and in accordance with his ethical obligations as an attorney. First, he undertook a good-faith search in response to the subpoenas received from the OIC and identified documents in his possession that were responsive to the subpoenas. Second, he retained counsel to advise him of his responsibilities in the matter and acted consistently with counsel's legal advice. Third, pursuant to Mr. Watkins' instruction and upon the advice of counsel, he identified the responsive documents to the subpoenaing bodies but declined to produce them voluntarily until he was released from his ethical obligation either by the client's consent or by the direction of a competent tribunal. Fourth, he declined to reveal Mr. Watkins' confidences, because the privilege in dispute was that of the putative client to assert or waive, subject to order of a tribunal of appropriate jurisdiction. Fifth, he produced other responsive materials not subject to Mr. Watkins' claim of privilege. In

Exhibit B

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May 8, 1996

BY HAND

Hon. William F. Clinger, Jr., Chairman
House Committee on Government Reform and Oversight
United States House of Representatives
Room 2157
Rayburn House Office Building
Washington, DC

Dear Chairman Clinger:

This in response to your letter of May 2, 1996, in which you raised concerns about the response of my client, Matt Moore, to the Committee's subpoena dated February 6, 1996. In that letter, you stated your intent to hold a meeting of the Committee on May 9 to consider whether to vote to compel the production of additional documents from Mr. Moore under penalty of contempt. Before the Committee takes such a serious step, it should be fully aware of the relevant facts of Mr. Moore's cooperation with the Committee to date, and the relevant ethical standards that constrain Mr. Moore's ability to produce the documents in question at this time.

First, Mr. Moore has produced to the Committee all of the responsive documents in his possession, other than those covered by a claim of privilege. Mr. Moore has also submitted a log of documents withheld on a claim of privilege asserted by Mr. David Watkins. This log clearly identifies the documents for which a claim has been asserted, so that the Committee is in a

Hon. William F. Clinger, Jr.
May 8, 1996
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position to resolve any dispute it has with Mr. Watkins over whether the documents should be produced.¹⁴

Second, on March 26 Mr. Moore voluntarily appeared at a deposition requested by the Committee, where he testified for approximately five hours. Mr. Moore appeared without being subpoenaed, and at his own expense. His deposition made clear that Mr. Moore has no first hand knowledge of the matters now of most interest to the Committee.

Third, I have stressed to counsel for the Committee throughout these proceedings that Mr. Moore himself is not asserting any privilege. Once Mr. Watkins' independent claims of privilege are finally resolved, Mr. Moore will promptly produce any documents found by a court not to be privileged. In light of this fact, there absolutely is no need for the contempt proceedings now under consideration by the Committee.

The lack of a rationale for the threat of sanctions is particularly true given the ethical constraints that bind Mr. Moore in this case. Under the D.C. Rules of Professional Responsibility an attorney may not release a confidence or secret of a client. Although the Committee has questioned whether an attorney-client relationship existed here, according to the D.C. Bar Legal Ethics Committee, Mr. Moore's ethical obligation is nevertheless to withhold the documents in question under the circumstances of this case. The Ethics Committee has explicitly held, for example, that where a colorable claim of privilege has been asserted, the Rules of Professional Responsibility require an attorney to assert a claim of confidentiality pending adjudication of the claim even where the existence of the attorney/client relationship is in question:

¹⁴ The privileged documents were identified in Mr. Moore's letters to the Committee of February 26 and 29. On May 3, Mr. Moore produced additional documents identified as potentially responsive to the Committee's subpoena after February 29. The May 3 production has no relation to the privilege issue now under consideration by the Committee.

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Obviously, the potential for unethical conduct -- and the risk to be protected against -- is that of disclosing confidences or secrets of one who is ultimately found to be a client or former client. Thus, if there is a colorable basis for asserting that the statements were made in the course of an attorney/client relationship, the lawyer must resolve the question in favor of the existence of that relationship and in favor of preserving the confidentiality of the disclosures. This colorable basis standard obtains even when . . . the lawyer's personal view is that the attorney/client relationship either never existed or was terminated prior to the disclosure at issue.

D.C. Bar Opin. No. 99 (Jan. 28, 1981) (copy attached) (emphasis added).

The Bar Committee in the same matter went on to state:

the supposed client's statements may be disclosed only with his consent after full discussion or as required by law or court order. Thus, assuming [the client] in the present inquiry does not consent to disclosure of his statements, [the attorney's] obligation is to assert before the grand jury the confidentiality of those statements. The ethical obligation of the [attorney] is simply not to compromise his client's position voluntarily, and that obligation continues until the relevant forum has resolved in the negative the question of the existence of the attorney/client relationship.

Id. (emphasis added). See also D.C. Bar Opin. No. 14 (Jan. 26, 1976) (copy attached).

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These opinions of the Ethics Committee make clear that the only proper course here for Mr. Moore is to withhold the documents from production, pending adjudication of Mr. Watkins' claim.

In summary, Mr. Moore has cooperated with the Committee to the extent possible under relevant ethical standards. Mr. Moore has fully disclosed to the Committee the existence of the documents now in dispute, and copies of the documents are readily available if needed once a court of competent jurisdiction has addressed the merits of the claim of privilege. In light of this background, I request on Mr. Moore's behalf that the Committee reconsider the course proposed in your letter of May 2, under which Mr. Moore could be found in contempt of the Committee for doing nothing more than living up to his ethical obligations. I greatly appreciate your consideration of this request.

Sincerely,

A handwritten signature in cursive script, reading "William T. Hassler", followed by a horizontal line extending to the right.

William T. Hassler

Attachments

cc: Hon. Cardiss Collins (by hand)

Exhibit C

DISTRICT OF COLUMBIA BAR
LEGAL ETHICS COMMITTEE

Opinion No. 99

Preserving Confidences When
Existence of Attorney/Client
Relationship Is Uncertain. DR 4-101.

Inquirer, a lawyer in the District of Columbia, has been subpoenaed to testify before a grand jury regarding alleged criminal activity of an individual identified as "B". B has made statements to inquirer which -- at least to inquirer -- tend to implicate B in the matter under investigation. It appears that, in a prior unrelated criminal proceeding, inquirer filed a motion on behalf of B and received some payment for his services. Inquirer expresses doubt and confusion as to whether B's recent statements were made in the course of an attorney/client relationship.

Resolution of the ultimate fact question -- whether a professional relationship existed between inquirer and B -- requires information concerning what B may have reasonably thought concerning the relationship. That information is simply not available to the Committee. On prior occasion, the Committee has declined to issue an opinion requiring factual determinations which cannot be made on the basis of an inquirer's representation (e.g., Opinion 88).

In this case, however, the ethical question arises precisely because of the unclarity of the fact situation. The

duty to preserve the confidences and secrets of a client is grounded in the existence of the attorney/client relationship. Canon 4; DR 4-101. Here, the existence of the attorney/client relationship is problematic. The question presented is whether there is a duty of nondisclosure in this uncertain circumstance. The Committee believes that it does.

Obviously, the potential for unethical conduct -- and the risk to be protected against -- is that of disclosing confidences or secrets of one who is ultimately found to be a client or former client. Thus, if there is a colorable basis for asserting that the statements were made in the course of an attorney/client relationship, the lawyer must resolve the question in favor of the existence of that relationship and in favor of preserving the confidentiality of the disclosures. This colorable basis standard obtains even when -- as here -- the lawyer's personal view is that the attorney/client relationship either never existed or was terminated prior to the disclosures at issue.

Under DR 4-101(C)(1) and (2), the supposed client's statements may be disclosed only with his consent after full discussion or as required by law or court order. Thus, assuming B in the present inquiry does not consent to disclosure of his statements, inquirer's obligation is to assert before the grand jury the confidentiality of those statements. Of course, inquirer may ultimately be compelled to disclose by court order upon a finding of nonexistence of the attorney/client relationship. However, as we pointed out in Opinion 83, disclosure

pursuant to court order is not unethical. The ethical obligation of the inquirer is simply not to compromise his client's position voluntarily, and that obligation continues until the relevant forum has resolved in the negative the question of the existence of the attorney/client relationship.

Inquiry No. 80-9-33
January 28, 1981

Exhibit D

Committee on Legal Ethics
The District of Columbia Bar
OPINION No. 14

We have been asked several questions concerning, in general, the duties an attorney owes a former client whom the attorney represented individually in connection with a civil investigation by a government regulatory agency when the attorney's files relating to the former client are subpoenaed by a grand jury. The former client was represented jointly with a corporate client that subsequently waived its attorney-client privileges. More specifically, we have been asked the following:

1. Whether and when an attorney who is served with a grand jury subpoena duces tecum to produce documents relating in whole or in part, or possibly relating in whole or in part, to a former client is required to notify that former client of the receipt of the subpoena.

2. Whether the attorney is required to provide the former client's successor attorneys with a copy of the subpoena in question and whether he is required to do so when the attorney believes that only portions of the subpoena call for documents relating solely to his representation of the former client and that other portions of the subpoena relate either to his representation of the former client

jointly with other clients, or relate solely to other, unrelated clients.

3. Whether the attorney should, prior to production of the documents in compliance with the subpoena, provide the former client's successor attorneys with access to, or copies of, the documents under subpoena that relate either solely to the former client or jointly to the former client and other clients so that the successor attorneys can present to the court claims of privilege or other objections prior to production, or whether the attorney, as the recipient of the subpoena, is the only one entitled to determine, prior to production, which documents are privileged or arguably so.

4. Whether the attorney may assert a work-product privilege against his former client as to internal attorney work-product documents in his files relating either solely to the client or jointly to him and other clients produced during the lawyer-client relationship, particularly when such documents are requested by the former client to assist him in preparing for a grand jury investigation or other legal proceeding, or whether the attorney may do as he wishes with such documents. Also, we are asked whether the attorney has a duty to assert a work-product privilege on behalf of his former client when work-product documents relating to representation of him are subpoenaed, and whether the attorney may assert the privilege against his client as to those documents he does in fact disclose to third parties or proposes to disclose.

We note at the outset of this opinion that in one case that has come to our attention a trial court in another jurisdiction ruled upon the professional responsibilities of members of the D.C. Bar in circumstances similar to those presented in the questions posed to us. This trial court opinion diverges from ours in some respects. The existence of this out-of-state opinion, far from foreclosing us from setting forth in this opinion guidelines for the future conduct of members of the D.C. Bar, emphasizes the desirability of our doing so. The questions presented are important and are not squarely answered by the terms of the Code of Professional Responsibility. In issuing the opinion, we do not mean to pass judgment on any actions inconsistent with this opinion that may have been taken by members of the bar before this opinion was published.

I

The Code of Professional Responsibility emphasizes that a lawyer should preserve the confidences and secrets of his clients, Canon 4; EC 4-1; DR 4-101, and that he should "not use information acquired in the course of representation to the disadvantage of the client," EC 4-5; DR 4-101(B)(2). Not only must the attorney preserve those client's "confidences" that are protected by the attorney-client privilege (which relates to communications from the client to the attorney)

but also "secrets," which the Code says include "information gained in the professional relationship . . . the disclosure of which would be embarrassing or would be likely to be detrimental to the client." DR 4-101(A). Moreover, this ethical obligation to guard the confidences and secrets of a client, unlike the evidentiary attorney-client privilege, "exists without regard to the nature or source of information or the fact that others share the knowledge." EC 4-4.

EC 4-6 provides that "the obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment." A lawyer's continuing obligation to a client whose representation he once undertook is underscored by those provisions of the Code that deal with the necessity of taking steps to avoid prejudicing a client as a result of termination of the representation. EC 2-31 provides generally that lawyers who undertake representation should complete the work involved and, more specifically, trial counsel for a convicted defendant should represent him through the appeal (unless new counsel is substituted). EC 2-32 provides further that when an attorney declines to proceed with a case on appeal he should endeavor "to minimize the possible adverse effect on the rights of his client," and DR 2-110(H)(2) provides: "In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client"

EC 2-32 provides specifically that an attorney not continuing a client's representation should, inter alia, deliver to the client all papers and property to which the client is entitled, cooperate with counsel subsequently employed and otherwise attempt to minimize the possibility of harm. See also ABA Informal Opinion No. 724, Dec. 27, 1963.

A lawyer is excused from his ethical duty to preserve a client or former client's confidences and secrets when he is required to disclose them by law or court order. DR 4-101(C)(2). The question before us is how the attorney discharges his ethical responsibilities when documents come into his possession or are obtained or produced by the attorney during the course of his representation of a client and those documents are subsequently subpoenaed by a grand jury.

It is our opinion that, when documents are subpoenaed or an effort is otherwise made to compel their disclosure, it is the lawyer's ethical duty to a former client to assert on the former client's behalf every objection or claim of privilege available to him when to fail to do so might be prejudicial to the client. This rule is settled in the case of an existing attorney-client relationship. See Schwimmer v. United States, 232 F.2d 855, 863 (8th Cir.), cert. denied, 352 U.S. 833 (1956), for a statement of an attorney's duty to assert any applicable attorney-client privilege.

Accord: EC 4-4 which provides: "A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client." For reasons stated above, the rule should not be different in the case of an attorney-client relationship that has terminated.

We think, then, in answer to the first question posed, that in order to "minimize the possibility of harm" to a former client, EC 2-32, an attorney should promptly notify his former client when he receives a subpoena asking for documents that came into his possession during the course of the representation of that former client or documents that affect or may affect that former client, irrespective of whether the attorney knows at the time of the receipt of the subpoena that he still has in his possession any specific documents arising during the attorney-client relationship. If there is any possibility whatever that the attorney has in his possession any subpoenaed document affecting the interest of his former client, which came into his possession from any source whatever during the course of that representation, he should immediately, upon receipt of the subpoena, notify the former client.

II

Our answer to the second question is that the lawyer need not provide the former client's successor attorneys with a copy of the subpoena but, if the lawyer believes that the disclosure of extraneous portions of the subpoena would risk prejudice to other clients, only with a copy of those portions of the subpoena that the lawyer believes relate to the former representation. In fulfillment of his obligation to his former client the lawyer is not obliged to risk unwarranted disclosures of confidences or secrets of other clients and indeed is ethically forbidden to do so.

III

Our answer to the third question is that the lawyer should provide to the former client or to the attorneys now representing the former client copies of or access to all documents called for by the subpoena that relate either solely to the former client or jointly to the former client and other clients so that the successor attorneys can determine or assist in determining as to which documents claims of privilege should be made.

The attorney should zealously guard against the erroneous release, by production in court in response to the

subpoena, of any documents that represent confidences or secrets obtained by the attorney in the course of his representation of the former client.

The attorney should resolve any disagreements with his former client as to the validity of any claims of privilege in favor of the client or should let the former client have an opportunity prior to production to assert any objection or claim or privilege that he, or successor attorneys acting on his behalf, think applicable. As a practical matter, this means that the attorney should provide the client, or his successor attorneys, prior to production, with access to or copies of the documents at issue so that they can properly frame and present to the court their objections or claims of privilege.

EC 5-12 is apposite here. That provision requires that, when co-counsel are unable to agree on a matter vital to the representation of their client, "their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken." We believe that this precept applies also to those situations involving a client's present and former counsel.

We recognize, as does the Code of Professional Responsibility, that lawyers may disagree on a matter vital

to the representation of their client. We also note that "The bounds of the law in a given case are often difficult to ascertain." EC 7-2. In particular, attorneys can honestly differ among themselves over such issues as whether a grand jury subpoena is valid, or whether it calls for a particular document in question, whether a particular document is a privileged communication between the attorney and the client, or is otherwise privileged, or whether a particular document belongs to the client and contains self-incriminatory information that would form the basis for a claim of Fifth Amendment privilege.

Thus, where there are disagreements between present and former counsel as to the existence of any objections or privileges, with respect to subpoenaed documents that came into the possession of the former counsel from any source during the course of representing the client, the client should determine which attorney -- his former attorney or his present attorney or both -- should review the subpoena and documents at issue and present objections to the court, together with the documents in camera if requested by the court, prior to their production in compliance with the subpoena. The attorney should not disclose any document as to which the client, or his successor

attorneys acting on his behalf, assert an objection or privilege but as to which he believes the objection invalid or the privilege unavailable. Rather, the attorney should first present the document to the court and inform the court of the disagreement. At the same time, the client or his new attorneys can also present to the court their arguments for non-disclosure. Having thus satisfied his ethical duties towards his former client, the attorney is then free to comply with whatever directive the trial court gives. ^{*/}

^{*/} In the case of an existing attorney-client relationship, if an attorney disagrees with an existing client as to the validity of a particular objection or privilege, or whether failure to assert it entails potential prejudicial harm to the client, he should not prejudice his client or render the issue moot by himself producing the documents called for but rather should, prior to production, present the impasse to the appropriate court for adjudication, and give his client an opportunity to present his claims to that court also. See EC 7-7. By first allowing the client to assert whatever arguments against disclosure he thinks appropriate, the attorney best discharges his ethical duties to the client. The public interest is also protected since the court can review the documents at issue in camera and decide the validity of any claimed objections or privileges. (Of course the attorney may not suppress the fact that such documents are in his possession. EC 7-27.)

This is the course to be followed even when the attorney believes the client's assertion of privilege to be a frivolous one. An attorney may withdraw from representation of a client if he believes the client's claims to be frivolous and the client persists in asserting them, but he should not foreclose his client's opportunity to present his claims. See *Anders v. California*, 386 U.S. 738 (1967); *McCartney v. United States*, 343 F.2d 471, 472 (9th Cir. 1975).

IV

We turn now to the questions relating to documents in the attorney's files considered by the attorney or his former client to be the attorney's work product produced by him for the purpose of representing the client. Such work product may well be considered the property of the attorney, but we need not concern ourselves here with that issue. We believe that the attorney's ethical duty to preserve his client's confidences and secrets discussed above extends also to the attorney's work product produced during the course of the representation.^{*/} Certainly, if the attorney for any reason, has breached this responsibility and made such work product available to third parties, under no circumstances should he refuse to make it available also to the former client for whose benefit, or at least joint benefit, it was produced. Moreover, we believe that there is no requirement in law or in ethics that an attorney not disclose such work product to his former client in any event. Indeed, under his general duty to cooperate with a former client's new counsel discussed

^{*/} In this connection, see EC 4-6, providing that, when an attorney retires from practice, his work product should either be destroyed or delivered to another attorney and that the client's option as to method of disposition should be a dominant consideration.

above, and to do all that he can to minimize the possibility of harm arising as the result of his withdrawal from representation of that client in succeeding or related litigation, we think that he should turn over to his former client, or the client's successor attorneys, that portion of his work product which is necessary to the adequate representation of the client.

As with any privilege existing either wholly or partially for the benefit of clients, it is our opinion that an attorney has an ethical duty to assert the work-product privilege whenever applicable when documents in the attorney's files are subpoenaed. Even though the attorney work-product privilege is technically considered the attorney's to assert in a court rather than the client's, the underlying purpose of the privilege is, at least partially, to protect and further the effective representation of clients. See Hickman v. Taylor, 329 U.S. 495, 514-15 (1947) (Jackson, J., concurring). Therefore, the attorney should not divulge such work product when to do so would work to the disadvantage of a client.

* * *

None of our answers is affected by the fact that the representation of the client in question was a joint representation, along with a corporate client that subsequently waived its attorney-client privilege. That waiver frees the lawyer to produce documents that relate solely to the corporate client so far as any claims to confidentiality by it are concerned, but it does not free him to disclose documents that relate in any way to the former individual client. In this regard, we note that, when an attorney undertakes to represent a corporate officer in his individual capacity and also to represent the corporation, documents obtained or produced during such joint representation frequently, if not invariably, intertwine the interests of the joint clients. Such joint representation is fraught with potential conflict and a lawyer should represent a corporate official in his individual capacity and also represent the corporation only if the lawyer is convinced that differing interests, or potentially differing interests, are not presented. EC 5-15; EC 5-17; and EC 5-18.

Bernard Nussbaum

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GREGORY N. RACZ
HILARY SUNGHEE SEO
DAVID G. SOMMERS

August 24, 2000

SUBMITTED UNDER SEAL

United States Court of Appeals
For the District of Columbia Circuit

FILED AUG 30 2000

Special Division

Mark J. Langer
Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, DC 20001-2866

Re: In re: Madison Guaranty Savings & Loan
Association, Division No. 94-1
(In re: William David Watkins and
In re: Hillary Rodham Clinton)

Dear Mr. Langer:

By letter dated June 30, 2000, you advised me that the Court had entered an order authorizing me to examine portions of the Final Report of the Office of the Independent Counsel in the above matter. Your letter states that I have the right to submit comments or factual information for possible inclusion in an appendix to the Report. Having examined those pages of the Report that the Court made available to me, I would like to express my strong disagreement with two footnotes which together suggest that I may have attempted to conceal Deputy White House Counsel Vincent Foster's Travel Office documents from investigators. Any such suggestion is wholly unwarranted: contemporaneous notes establish that I disclosed the existence of those documents to various investigators from the time that I first became aware of them.

Thus, first, in a footnote on page 94 of the Report, the OIC cites page 55 of the transcript of my July 16, 1996 grand jury testimony for the following proposition: "During the

Mark J. Langer
August 24, 2000
Page 2

search of Foster's office following his death, White House Counsel Bernard Nussbaum recovered a file regarding the Travel Office that he claimed he did not give to investigators because it related to an 'ongoing matter.'" While I do not have access to the transcript of my grand jury testimony, the record should be clear that: I did nothing to conceal the existence of Mr. Foster's Travel Office file from the investigators; and the reason that I did not provide the file to the investigators at the time of the search of Mr. Foster's office was not because it related to an ongoing matter, but because no investigator asked for it. (The reason that I personally kept the file after the search was that it related to an ongoing matter that I intended to work on.)

Assistant White House Counsel Clifford Sloan and Michael Spafford, an attorney representing the Foster family, were present during my search of Mr. Foster's office. The investigators who were there included representatives of the Park Police, Federal Bureau of Investigation and Secret Service. As I testified before the grand jury, during the course of the search, I removed Mr. Foster's Travel Office file from his brief bag and identified it as such to the assembled group. That I expressly referred to the Travel Office is corroborated by contemporaneous notes separately made by each of Mr. Sloan and Mr. Spafford. Copies of the relevant pages of those notes are annexed hereto as Exhibits A (Sloan) and B (Spafford); see Spafford Senate Dep., 7/11/95, at 62 ("White House Travel Office management, that's either rule or work, but I remember the Travel Office coming up, some document relating to the Travel Office.") (Exhibit C hereto). While the investigators asked to review certain of the Foster office documents that I identified during the search, Mr. Spafford has confirmed that they made no such request for the Travel Office file. Spafford Senate Tr., 7/27/95, at 528 (Exhibit D hereto); see also Spafford Senate Dep., 7/11/95, at 130-31 (Exhibit C hereto).

Second, in a footnote on page 95 of the Report, the OIC cites page 59 of my grand jury testimony for the following proposition: "Nussbaum says he did not produce the file to the GAO because it was 'classic privileged work product material.'" The Report then indicates that Nancy Kingsbury, who headed the GAO's Travel Office investigation, testified before the grand jury that the GAO was "never told this." Any testimony by Ms. Kingsbury to the effect that the GAO was not told that Mr. Foster had had Travel Office documents in his office is contradicted by the GAO's own notes.

On September 24, 1993 -- well before the GAO's May 1994 Travel Office report -- I was interviewed by the GAO with respect to the Travel Office matter. The GAO's notes of that interview expressly state:

Mr. Foster's office contained confidential and privileged information. It also contained materials regarding the travel office which Mr. Nussbaum did not describe. (Emphasis added.)

A typewritten copy of those notes (taken from an attachment to an October 7, 1994 letter from Congressman William F. Clinger, et al., to Congressman John Conyers, Jr.) is annexed hereto as Exhibit E.

Mark J. Langer
August 24, 2000
Page 3

Ms. Kingsbury, the principal author of the GAO's Travel Office report, has long sought to deny the fact that I advised the GAO about Mr. Foster's Travel Office file. Accordingly, back in 1994, she saw fit to annotate the above GAO interview notes about the Travel Office "materials" as follows:

As we were drafting the report, we double-checked the support for this sentence. None of the other GAO participants recall this being raised in the discussion. The writer said that the material referred to was the GAO letter described in the following paragraph.

-- Exhibit E.

But Ms. Kingsbury's attempt to explain away the plain meaning of the GAO notes is unavailing.

While there was a copy of the "GAO letter" in Mr. Foster's Travel Office file, the GAO notes refer to "materials" -- in the plural. Did the unidentified "writer" of the GAO notes say that I referred to "a letter," but that he or she recorded that as "materials"? Did the writer say that I stated that the only thing in Mr. Foster's Travel Office file was a letter, but that he or she decided to leave that information out of the notes, and instead to write that I "did not describe" the materials? Neither of those theories makes sense. The only natural reading of the GAO interview notes is that I told the GAO -- just as I told the investigators during the search of Mr. Foster's office -- that Mr. Foster had had Travel Office documents in his office.

* * *

Although the OIC Report does not directly state that I acted improperly with respect to Mr. Foster's Travel Office file, the two footnotes may lead a reader to question whether I attempted to conceal its existence from investigators. I did not do that, and the contemporaneous notes of Messrs. Sloan, Spafford and the GAO, as well as Mr. Spafford's Senate deposition and hearing testimony, all belie any such notion. Accordingly, I ask that this letter be included in an appendix to the Report.

Respectfully yours,



BWN:sas
Enclosures

* The "GAO letter" is an anonymous letter about the Travel Office sent to the GAO in 1988.

Exhibit A

May 2000 - Review -

1000370

- Expenditure - revenue -
- Rules re: what with a gift & for
- Disbursements - some - transfer - capital - gifts -
- Work - related - accounts to be given in the
- WHTC - May 2000 -
- Study of the
- Policy -
- Transfer of Funds -
- Trans. in the / Trans. Expend -
- WHTC - how to spend with funds -
- Travel meeting /ing expenses -
- new re: pol. ex - budget -
- money before there were funds -
- Study -

Exhibit B

another whole part of notes on WH is series (eg,
use of military plans, cabinet retreat, ~~the~~ volunteers, etc

yellow pad notes re transition

→ a diatophone ← Ru: have someone listen to it; very soon

briefcase ← || Q: did he carry briefcase
all the time?

BN: no; used as file folder

blue file folders

copying of newspaper articles not @ him

4/8 letter in library
New note

notebook of notes of meetings, GC memos

→ May calendar

notes on expenditures, gets
 money on GC issues

key / correspond
receipt for
travel

Letter to Reno from Dele

copies of newspaper articles
nothing to be used

Ant

At the end (picture 8)

staff when arriving

13 articles
post art on art(s)

note² pad us/ Now notes re GC issue

WH travel etc report rule

Standards of Political Conduct
 Memo to Christian Law Library

memo. re. gifts (ethic)

correspondance de transition

1. name re with functions, manager

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(included
income)
Wes. Dist. &
people
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3.1.3 厚板折弯

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from - 0 / HCL

memo re potential applicant

phone messages: 1/25, 1/26, 1/22, 1/27

stationers

h/w note from staff

Exhibit C

**DEPOSITION OF MICHAEL L. SPAFFORD
IN RE: S. RES. 120**

TUESDAY, JULY 11, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

Deposition of MICHAEL L. SPAFFORD, called for examination pursuant to notice of deposition, at 5:45 p.m. in Room 640-A of the Hart Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

JAMES HAMILTON, Esq.
Swidler & Berlin, Chartered
3000 K Street, NW
Suite 300
Washington, DC 20007
On behalf of the Deponent.

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WITNESS	EXAMINATION
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by Mr. Johnson	140
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1 A When Mr. Nussbaum finished with the
2 drawer, he reached back and got the briefcase, which
3 was a black briefcase with what do you call those,
4 handles on the sides, put it up on the desk, took the
5 files out, put them on the desk, put the briefcase
6 back, and then Mr. Margolis, at that point, asked
7 him, and that's reflected to the right, a brief
8 question.

9 Did he carry briefcase all the time?

10 Nussbaum: No, used as file folder.

11 And then he proceeded to go through the
12 documents that he'd taken out of the briefcase, and I
13 ran out of room so I started going every which way,
14 but he started in the middle, and if you go down the
15 middle, and then there's a separate stack or line on
16 the left, then on the right.

17 Do you want me to read these?

18 Q If you would just read them out for me?

19 A Starting down the middle. Notebook of
20 notes of meetings, General Counsel issues, May
21 calendar. I believe Mr. Nussbaum said they had these
22 pre-printed Xeroxed calendars for the month that had

62

1 his appointments on them. Mr. Margolis was very
2 interested in that.

3 If you look to the right, you'll see "M.
4 Look at that." And that went into the document pile
5 of interest.

6 Then you have memorandum on expenditures,
7 gifts, memos on GC, General Counsel issues, notepad
8 with handwritten notes regarding General Counsel
9 issues, White House Travel Office management, that's
10 either rule or work, but I remember the Travel Office
11 coming up, some document relating to the Travel
12 Office.

13 Standards of ethical conduct. Something
14 relating to standards of ethical conduct.

15 Memo on Clinton presidential library.

16 Memo re gifts and ethics issues.

17 Correspondence re transition.

18 Memos re White House functions and the
19 inauguration or the inaugural.

20 Documents and legal opinions of the Office
21 of the Legal Counsel.

22 Then if you go to the left, there's a blue

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1 Service wanted to see, as a result of the review of
2 the trash, as you recall?

3 A I think my notes indicated that there were
4 a couple of items of interest that they indicated.

5 Q And do you have any reason to believe that
6 they were not shown those items?

7 MR. JOHNSON: When?

8 BY MR. BEN-VENISTE:

9 Q You may answer.

10 A No.

11 Q Mr. Johnson asked you whether the name
12 Whitewater came up and you indicated that, to the
13 best of your knowledge, it did not.

14 Can you tell us what it was that Mr.

15 Margolis stated he was looking for, or interested in?

16 A Well, at the outset, Mr. Nussbaum had
17 stated that he viewed this as looking for a suicide
18 note, and Mr. Margolis appeared to generally agree
19 with that. And as the search proceeded, he said
20 describe the items of interest as things relating to
21 motive. Was he depressed, you know, indications of
22 why, if he committed suicide, or foul play, if there

1 were indications of threats.

2 Q Now at the end of the meeting, was there
3 any heated discussion in your presence, between Mr.
4 Margolis and Mr. Nussbaum?

5 A No.

6 Q Was there any indication that the
7 procedure had not been followed to Mr. Margolis'
8 satisfaction?

9 A You mean the one that was agreed on up
10 front?

11 Q Yes.

12 A No indication, no.

13 Q Did you hear at any point in the meeting
14 any of the investigators voice disapproval with the
15 procedures that had been outlined by Mr. Nussbaum?

16 A No.

17 Q You indicated that from the briefcase,
18 there were documents, and I don't mean to be all
19 inclusive, but there were documents identified as
20 Travel Office documents.

21 A My notes reflect that, yes.

22 Q Do you have any recollection, either

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1 independent of your notes, or on the basis of
2 consulting your notes, as to whether anyone in that
3 room made a request to review Travel Office
4 documents?

5 A No.

6 Q There was also indicated in your notes a
7 letter in the briefcase to Attorney General Reno from
8 Senator Dole.

9 Can you tell us whether in fact that
10 document was requested by any of the investigators?

11 A Well, I don't have an arrow next to it in
12 my notes, but I do have a reference that says that it
13 mentioned Kennedy and I don't recall whether that was
14 something that Mr. Nussbaum volunteered or was in
15 response to a question.

16 The Kennedy was the gentleman on the White
17 House Staff, the General Counsel's Office.

18 Q Following that clarification by Mr.
19 Nussbaum, was there any request to see that document?

20 A According to my notes, no.

21 Q You indicate, I think, that the briefcase
22 was rather full. Is that correct?

1 A Yes.

2 Q And that after removing the files from the
3 briefcase, Mr. Nussbaum placed the briefcase back on
4 the floor?

5 A That's correct.

6 Q Did you see whether or not Mr. Nussbaum
7 looked into the briefcase after the files had been
8 removed?

9 (Pause.)

10 A I don't recall one way or the other.

11 MR. JOHNSON: One second.

12 (Discussion off the record.)

13 BY MR. BEN-VENISTE:

14 Q As Mr. Johnson was going through your
15 handwritten notes, perhaps because of the lateness of
16 the hour, or perhaps because we got diverted on some
17 other subject, for some reason we did not cover what
18 is listed as credenza: on R, signifying right.

19 MR. JOHNSON: Richard, what page are you
20 on?

21 MR. BEN-VENISTE: These aren't numbered
22 pages, so I'm going to ask you to find the page that

Exhibit D

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

THURSDAY, JULY 27, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

"The Committee met at 9:35 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The hearing will come to order.

[Witness sworn.]

Thank you. Mr. Spafford, do you have a statement that you would like to give to the Committee?

Mr. SPAFFORD. Yes, sir, a brief statement.

**SWORN TESTIMONY OF MICHAEL L. SPAFFORD
ATTORNEY, SWIDLER & BERLIN**

Mr. SPAFFORD. Good morning. My name is Michael Spafford—

The CHAIRMAN. Michael, why don't you pull that microphone up closer to you?

Mr. SPAFFORD. My name is Michael Spafford; I'm an attorney practicing in Washington, DC. From time to time I have assisted my partner, Jim Hamilton, in representing the family of Vincent Foster. I performed services for the family on July 22, 1993, and I am prepared to assist this Committee by testifying about certain events that occurred that day.

I trust this Committee recognizes that all my actions in this regard were in the context of representing clients under the District of Columbia code of professional responsibility, clients, I must say, who have suffered grievously. My sole charge was to assist them. Because of my role, there are some certain privileged matters about which I cannot testify.

In an attempt to be helpful to this Committee, privilege has not been asserted as to certain documents I prepared on July 22nd and 23rd which I am prepared to discuss today and have provided to the Committee. However, I am constrained by my responsibilities to my clients and the ethics of my profession from testifying about other privileged matters.

Further down, there was a map of Metropolitan Washington. I believe I referred to this earlier. Mr. Margolis asked if Fort Marcy was circled on the map, and Mr. Nussbaum opened up the map and said no. But that went into the pile of interest to the investigators as well.

You want me to go to the next page?

Mr. BEN-VENISTE. Yes, please.

Mr. SPAFFORD. In the top right drawer was a Dictaphone. Mr. Margolis asked if there was a tape in it; he wanted someone to listen to the Dictaphone very soon. Mr. Nussbaum popped the Dictaphone open and there was no tape in it. We then proceeded—

Mr. BEN-VENISTE. So that was, as we say, a moot point?

Mr. SPAFFORD. That's correct. We then proceeded—Mr. Nussbaum proceeded to the briefcase. Mr. Margolis asked a question: Did he carry the briefcase all the time? Mr. Nussbaum answered no, he used it as a file folder.

Proceeding down the documents that were in the briefcase, Mr. Margolis was interested in the May calendar, which I believe Mr. Nussbaum described as one that was printed out on a computer that described appointments.

That appears to be the only document that they raised a question about from the briefcase.

If you look further down on that page, we're back again to the drawers on Mr. Nussbaum's right in the desk. There were phone messages there of various dates which Mr. Nussbaum read aloud. Mr. Margolis wanted to look through those to see if there were any non-office telephone calls. Those went into the pile of interest to the investigators.

Proceeding to the next page, we get to some drawers on the left-hand side of the desk. There were telephone slips from February there. To the right, you will see "please review." That was Mr. Margolis' comment. He wanted Mr. Nussbaum to review those. At some point in this is when Mr. Margolis went through his litany of what he was interested in.

Checks, a mortgage book—that could be a meeting book. I'm not sure I understand my abbreviations here. "Mtg book." Then, the Foster notebook is another one of interest that Mr. Margolis wanted to know about. He wanted to know if there was anyone in DC or any doctors listed in it. Just so it's clear, the notebook was a notebook of telephone numbers and addresses of people. It appeared to be people that Mr. Foster had worked with before, so that document actually went in the personal document pile.

If you look at the next page, there was a drawer—it says on the right; it should be the left. If you follow the sequence of the notes, you'll see that it is on the left. This is one of the drawers that had the green files in it with the tabs listing what the files were. Mr. Nussbaum looked through those and said that they were generally work-related, and Mr. Margolis wanted him to look at those files and look through them for any threats or unusual items.

We then get to the trash bag. There were a couple of things—

Senator SARBANES. When you say that you wanted him to look through them, that was, in effect, something Mr. Nussbaum would do after all of this process was completed; is that correct?

Mr. SPAFFORD. That's correct, Senator.

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Exhibit E

16. Interview with Bernard Nussbaum, Counsel to the President, by staff with the General Accounting Office (September 24, 1993).

In the GAO interview notes, next to the reference that Nussbaum said there were WHTO materials in Foster's office, there is the following handwritten notation, by Nancy Kingsbury, GAO's Director, Federal Human Resources Management Issues. Kingsbury directed the GAO review of the WHTO and was the principle author of the report, White House Travel Office Operations.

"As we were drafting the report, we double-checked the support for this sentence. None of the other GAO participants recall this being raised in the discussion. The writer said that the material referred to was the GAO letter described in the following paragraph."

NKingsbury
5/12/94

The "GAO letter" referenced above, is an anonymous letter sent to GAO in 1988 making certain allegations of wrongdoing in the WHTO (see GAO's White House Travel Office Operations at page 22).

17. Written responses to GAO Questions by Patsy Thomasson, Special Assistant to the President for Management and Director of the Office of Administration and Margaret Williams, Assistant to the President and Chief of Staff to the First Lady, transmitted by Neil Eggleston, Associate Counsel to the President, March 30, 1994.

Bruce L. Overton

RECEIVED
U.S. COURT OF APPEALS
FOR THE D.C. CIRCUIT

00 SEP 12 PM 4:13

MAILROOM

September 11, 2000

United States Court of Appeals
For the District of Columbia Circuit

FILED SEP 12 2000

Mr. Mark J. Langer
Clerk of the Court
U.S. Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Special Division

re: Report of Independent Counsel: In Re: William David Watkins

Dear Mr. Langer:

This letter is in reply to the opportunity the Court of Appeals has afforded me to review the portions of the report of the Independent Counsel in the above-referenced matter. Although the references to my grand jury testimony were minor and rather fragmented in the portions of the Final Report I was allowed to view, I did wish to bring one matter to your attention.

My testimony was primarily on the issue of the discovery of the "Watkins" memorandum and the establishment of a chain of custody with respect to its disclosure to the Independent Counsel. The report indicates that my testimony made reference to a phone conversation which I had with the White House Office regarding the discovery of the "Watkins" memorandum and that I did not discuss this conversation in my grand jury testimony because I had been instructed by the White House Office that the conversation was a privileged matter. At this point, some four years after discovery of the Watkins memorandum, I do not recall such a conversation with the White House Office. While such a phone conversation may well have occurred, I have no reference to it in my attorney's notes regarding my testimony which were written immediately after I provided the testimony. I, therefore, respectfully request that someone on the Independent Counsel's staff re-read my testimony to ensure that I did make this statement.

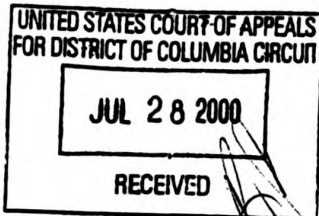
Finally, should the reference to my testimony be accurate, it appears to be used in the context of assertions of privileges by those providing grand jury testimony and the validity of such assertions which were subsequently limited by the Court of Appeals' decision in *In re: Bruce Lindsay*. At the time I provided my testimony (June 1996), the *Lindsay* case -- and the elucidation of the standards for asserting privileges in these instances -- had yet to be determined. Consequently, I believe it would be useful for the Final Report to somehow acknowledge that career civil servants who did assert privileges under these circumstances, did so in good faith.

Sincerely,



Bruce L. Overton

Patsy Thomasson



KUTAK ROCK LLP

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July 27, 2000

United States Court of Appeals
For the District of Columbia Circuit

VIA FIRST-CLASS MAIL

FILED JUL 28 2000

Special Division

Mark J. Langer, Clerk
United States Court of Appeals
District of Columbia Circuit
United States Courthouse
333 Constitution Ave., N.W.
Washington, D.C. 20001-2866

Re: Patsy Thomasson

Dear Mr. Langer:

Ms. Patsy Thomasson has reviewed the Final Report to the Division of the Court relating to the "travel office" firings in In Re: Madison Guaranty Savings & Loan Association (In re: William David Watkins and In re: Hillary Rodham Clinton). Despite some factual inaccuracies contained in the report, Ms. Thomasson has chosen, at this time, not to specifically comment on them.

Sincerely,

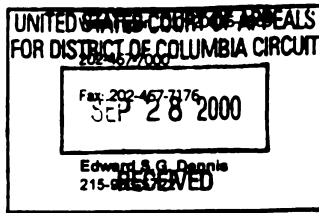


Jeffrey S. Jacobovitz

Cc: Ms. Patsy Thomasson

Margaret Williams

1800 M Street, N.W.



**Morgan, Lewis
& Bockius LLP**
COUNSELORS AT LAW

United States Court of Appeals
For the District of Columbia Circuit

September 28, 2000

FILED SEP 28 2000

VIA HAND DELIVERY

Special Division

Mark J. Langer, Clerk
U.S. Court of Appeals for the
District of Columbia Circuit
333 Constitution Ave., N.W., Room 5409
Washington, D.C. 20001-2866

Re: In re: Madison Guaranty Savings & Loan Association
(In re: William David Watkins and In Re: Hillary Rodham Clinton)
Division No. 94-1

Dear Mr. Langer:

On behalf of my client, former Chief of Staff, Margaret Williams, please enter the following statement as her response to the Report of Independent Counsel Robert W. Ray:

"As Chief of Staff to Mrs. Clinton, it was one of my responsibilities to review the wording of statements attributed to her. In reviewing a draft of The White House Travel Office Management Review, I was sensitive to the word "concerned" as describing Mrs. Clinton's state of mind in making an inquiry about the status of this matter. The report wasn't quoting Mrs. Clinton and I felt that had this matter been of "concern" to Mrs. Clinton, I would have been aware of it. The words "inquired about" were more precise than the word "concerned." That is why I edited the draft report as I did."

Sincerely,

Edward S.G. Dennis
on behalf of Margaret Williams

ESGD/rl

cc: Margaret Williams

Philadelphia Washington New York Los Angeles Miami Hamburg Pittsburgh Princeton
London Brussels Frankfurt Tokyo